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Federal Register

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WHY: To provide the public with access to information necessary to research Federal agency regulations which directly affect them. There will be no discussion of specific agency regulations.

WHEN: Tuesday, September 15, 2009
9:00 a.m.–12:30 p.m.

WHERE: Office of the Federal Register
Conference Room, Suite 700
800 North Capitol Street, NW.
Washington, DC 20002

RESERVATIONS: (202) 741–6008

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DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. FAA–2007–0219; Directorate Identifier 2007–NE–46–AD; Amendment 39–15806; AD 2009–03–05]

RIN 2120–AA64

Airworthiness Directives; Pratt & Whitney Canada (PWC) PW206A, PW206B, PW206B2, PW206C, PW206E, PW207C, PW207D, and PW207E Turboshaft Engines; Correction

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Final rule; correction.

SUMMARY: The FAA is correcting airworthiness directive (AD) 2009–03–05. That AD applies to PWC PW206 and PW207 series turboshaft engines. We published that AD in the **Federal Register** on February 20, 2009 (74 FR 7794). Paragraph (d) in the regulatory text is incorrect. This document corrects that paragraph. In all other respects, the original document remains the same.

DATES: *Effective Date:* Effective July 27, 2009.

FOR FURTHER INFORMATION CONTACT: Ian Dargin, Aerospace Engineer, Engine Certification Office, FAA, Engine and Propeller Directorate, 12 New England Executive Park; Burlington, MA 01803; e-mail: *ian.dargin@faa.gov*; telephone (781) 238–7178; fax (781) 238–7199.

SUPPLEMENTARY INFORMATION: On February 20, 2009 (74 FR 7794), we published a final rule AD, FR Doc E9–3046, in the **Federal Register**. That AD applies to PWC PW206A, PW206B, PW206B2, PW206C, PW206E, PW207C, PW207D, and PW207E turboshaft engines. We need to make the following correction:

§ 39.13 [Corrected]

■ On page 7795, in the third column, in the regulatory text, in the 10th paragraph, in the fourth line, delete ''Bell 429,''.

Issued in Burlington, Massachusetts, on July 20, 2009.

Peter A. White,

Assistant Manager, Engine and Propeller Directorate, Aircraft Certification Service.

[FR Doc. E9–17599 Filed 7–24–09; 8:45 am]

BILLING CODE 4910–13–P

DEPARTMENT OF HOMELAND SECURITY

Bureau of Customs and Border Protection

19 CFR Part 115

[CBP Dec. 09–27]

RIN 1651–AA78

Cargo Container and Road Vehicle Certification Pursuant to International Conventions: Designated Certifying Authorities

AGENCY: Customs and Border Protection, Department of Homeland Security.

ACTION: Final rule; technical amendment.

SUMMARY: This document amends the U.S. Customs and Border Protection (CBP) regulations in title 19 of the Code of Federal Regulations (CFR) concerning the certification of cargo containers for international transport pursuant to international customs conventions. These amendments reflect that the Commissioner of CBP has designated Lloyd's Register North America, Inc., as an authority in certifying containers for international transport under customs seal. This document further updates the addresses of three designated Certifying Authorities that are already listed in the CBP regulations.

DATES: This final rule is effective July 27, 2009.

FOR FURTHER INFORMATION CONTACT: Gary Rosenthal, Program Manager, Cargo Control Branch, Cargo and Conveyance Security, Office of Field Operations, (202) 344–2673.

SUPPLEMENTARY INFORMATION:

Background

The provisions of part 115 of the Customs and Border Protection (CBP) regulations (19 CFR part 115) establish procedures for certifying containers and road vehicles for international transport under customs seal in conformance with the Customs Convention on Containers (1956) (TIAS 6634), the Customs Convention on the International Transport of Goods Under Cover of TIR Carnets (1959) (TIAS 6633), the Customs Convention on the International Transport of Goods Under Cover of TIR Carnets, November 14, 1975 (TIAS), and the Customs Convention on Containers, 1972 (TIAS). The responsibility for the approval and certification of containers and road vehicles was transferred from the U. S. Coast Guard to the U.S. Customs Service (now CBP) by Executive Order 12445, dated October 17, 1983. Part 115 of the CBP regulations was promulgated by T.D. 86–92 which was published in the **Federal Register** (51 FR 16161) on May 1, 1986.

Under the certification program, containers and road vehicles, or proposed designs for such conveyances, may be submitted to various Certifying Authorities worldwide for approval. With respect to the designation of Certifying Authorities in the United States, § 115.3(a) of the CBP regulations (19 CFR 115.3(a)) defines a ''Certifying Authority'' as a non-profit firm or association, incorporated or established in the United States, which the Commissioner of CBP finds competent to carry out the functions set forth in §§ 115.8 through 115.14 of the CBP regulations (19 CFR 115.8–115.14), and which the Commissioner designates to certify containers and road vehicles for international transport under customs seal. The certification of containers and road vehicles for international transport under customs seal is voluntary, and non-certification does not preclude the use of containers and road vehicles in international commerce.

Section 115.6 of the CBP regulations (19 CFR 115.6) sets forth three Certifying Authorities that have been designated by the Commissioner to perform the examination and certification functions for containers and road vehicles. These are the American Bureau of Shipping, International Cargo Gear Bureau, Inc., and the National Cargo Bureau, Inc.

Under § 115.7 of the CBP regulations (19 CFR 115.7), the Commissioner may designate additional Certifying Authorities.

On May 8, 2002, Lloyd's Register North America, Inc. (''Lloyd's'') filed a request with CBP for status as a Certifying Authority for containers and container-design types pursuant to 19 CFR part 115. This request was granted by the Commissioner by letter dated April 10, 2003. Lloyd's status as a Certifying Authority does not extend to certification for individual road vehicles or road vehicle design types covered in 19 CFR part 115, subparts E and F. This document amends § 115.6 to add Lloyd's to the list of designated Certifying Authorities only for containers and container-design types.

This document further amends § 115.6 to update the addresses of the previously-designated three Certifying Authorities, and also to clarify that they are approved entities for certifying both containers and road vehicles. Finally, this document revises § 115.6 to distinguish between the two types of Certifying Authorities designated by the Commissioner.

Signing Authority

This document is limited to technical corrections of CBP regulations. Accordingly, it is being issued in accordance with section 0.2(a) of the CBP regulations (19 CFR 0.2(a)).

Inapplicability of Notice and Delayed Effective Date Requirements

Because this amendment merely updates the list of Certifying Authorities designated by the Commissioner and their addresses, and neither imposes any additional burdens on, nor takes away any existing rights or privileges from, the public, pursuant to 5 U.S.C. 553(b)(B), notice and public procedure are unnecessary, and for the same reasons, pursuant to 5 U.S.C. 553(d)(3), a delayed effective date is not required.

Executive Order 12866 and Regulatory Flexibility Act

This final rule document does not meet the criteria for a ''significant regulatory action'' as specified in Executive Order 12866. In addition, because no notice of proposed rulemaking is required for the reasons stated above, the provisions of the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*) do not apply.

Paperwork Reduction Act

In accordance with the Paperwork Reduction Act of 1995 (44 U.S.C. 3507 *et seq.*), this final rule document contains no new information collection and recordkeeping requirements that require Office of Management and Budget approval.

Unfunded Mandates Reform Act of 1995

This final rule will not impose an unfunded mandate under the Unfunded Mandates Reform Act of 1995. It will not result in costs of $100 million or more, in the aggregate, to any of the following: State, local, or Native American tribal governments, or the private sector. This final rule would not result in such an expenditure.

Executive Order 13132

In accordance with the principles and criteria contained in Executive Order 13132 (Federalism), this final rule will have no substantial effect on the States, the current Federal-State relationship, or on the current distribution of power and responsibilities among local officials.

List of Subjects in 19 CFR Part 115

Containers, Customs duties and inspection, Freight, International conventions.

Amendments to the CBP Regulations

■ For the reasons set forth above, part 115, CBP regulations (19 CFR part 115), is amended as set forth below:

PART 115—CARGO CONTAINER AND ROAD VEHICLE CERTIFICATION PURSUANT TO INTERNATIONAL CUSTOMS CONVENTIONS

■ 1. The authority citation for part 115, CBP regulations, continues to read as follows:

Authority: 5 U.S.C. 301, 19 U.S.C. 66, 1624; E.O. 12445 of October 17, 1983.

■ 2. Section 115.6 is revised to read as follows:

§ 115.6 Designated Certifying Authorities.

(a) *Certifying Authorities for containers and road vehicles.* The Commissioner has designated the following Certifying Authorities for containers and road vehicles as defined in this part:

(1) The American Bureau of Shipping, ABS Plaza, 16855 Northchase Drive, Houston, Texas 77060–6008;

(2) International Cargo Gear Bureau, Inc., 321 West 44th Street, New York, New York 10036;

(3) The National Cargo Bureau, Inc., 17 Battery Place, Suite 1232, New York, New York 10004–1110.

(b) *Certifying Authority for containers.* The Commissioner has designated Lloyd's Register North America, Inc., 1401 Enclave Parkway, Suite 200, Houston, Texas 77077, as a Certifying Authority only for containers as defined in this part.

Dated: July 22, 2009.

Jayson P. Ahern,

Acting Commissioner, Customs and Border Protection.

[FR Doc. E9–17876 Filed 7–24–09; 8:45 am]

BILLING CODE 9111–14–P

DEPARTMENT OF THE INTERIOR

National Indian Gaming Commission

25 CFR Parts 502, 514, 531, 533, 535, 537, 539, 556, 558, 571, 573

RIN 3141–0001

Amendments to Various National Indian Gaming Commission Regulations

AGENCY: National Indian Gaming Commission.

ACTION: Final Rule.

SUMMARY: The final rule modifies various Commission regulations to reduce by half the fee reporting burdens on tribes, remove obsolete provisions, clarify existing appellate procedures, update and clarify management contract procedures and costs for background investigations, clarify various definitions and licensing notices, update audit requirements to allow for simplified and consolidated reporting in certain circumstances, and add gaming on ineligible lands to the class of substantial violations warranting immediate closure.

DATES: *Effective Date:* This rule is effective on August 26, 2009.

Compliance Date: Submitting fee statements and payments twice per year under sections 514.1(c)(2) and 514.1(d) is not required until January 1, 2010.

FOR FURTHER INFORMATION CONTACT: Rebecca Chapman, Staff Attorney, Office of General Counsel, at (202) 632–7003; fax (202) 632–7066 (not toll-free numbers).

SUPPLEMENTARY INFORMATION:

I. Background

On October 17, 1988, Congress enacted the Indian Gaming Regulatory Act (IGRA or Act), 25 U.S.C. 2701–21, creating the National Indian Gaming Commission (NIGC or Commission) and developing a comprehensive framework for the regulation of gaming on Indian lands. 25 U.S.C. 2702. IGRA granted the NIGC, among other things, regulatory oversight and enforcement authority over tribal gaming. This authority

includes the authority to monitor tribal compliance with IGRA, NIGC regulations, and tribal gaming ordinances.

In 1992, the Commission adopted its initial regulations, and it has worked under IGRA for almost 20 years. 25 U.S.C. 2706(b)(10). The Commission undertakes this collection of regulation changes to better carry out its statutory duties. The final rule modifies various Commission regulations to (1) reduce by half the fee reporting burdens on tribes, (2) remove obsolete provisions, (3) clarify existing appellate procedures, (4) update and clarify management contract procedures and costs for background investigations, (5) clarify various definitions and licensing notices, (6) update audit requirements to allow for simplified and consolidated reporting in certain circumstances, and (7) add gaming on ineligible lands to the class of substantial violations warranting immediate closure.

Development of the Proposed Rules Through Tribal Consultation

The Commission identified a need for minor changes to various parts of its regulations, and in accordance with its government-to-government consultation policy (69 FR 16973 (Mar. 31, 2004)), requested input from Indian tribes. On March 26, 2007, the Commission prepared amendments to the regulations and sent a copy to the leaders of all gaming tribes for comment. Fifty-seven tribes provided written comments. The NIGC carefully reviewed all comments and often incorporated suggested changes that corrected grammar, clarified meaning, and better expressed or implemented the Commission's regulatory intent.

In addition, the NIGC consulted with tribes and their gaming commissions at regional gaming meetings around the country and at the Washington, DC, headquarters. Since March 26, 2007, the NIGC held consultations at 15 regional gaming conferences and consulted with more than 110 tribes with the proposed rule as a possible topic for discussion. Other than the previous 57 submissions, tribes gave no further suggestions for improvement on the proposed rule.

The Commission published the regulations—updated and improved by incorporation of tribal comments—as a proposed rule in the **Federal Register** on December 22, 2008, 73 FR 78242, Dec. 22, 2008. The Commission set a 45-day comment period, which would close on February 5, 2009. Nineteen tribal leaders requested more time to review the proposed rule, and the Commission extended the comment period to March 9, 2009. *See* 74 FR 4363, Jan. 26, 2009.

The Commission received a total of 54 written comments on the proposed rule. In addition, the Commission met with 56 tribes at six regional conferences around the country after the proposed rule's publication. The Commission invited all attending leaders to discuss the proposed rule, and two leaders provided additional comments. These comments were considered with the written comments received.

III. Purpose and Scope

The final rule modifies various Commission regulations to (1) reduce by half the fee reporting burdens on tribes, (2) remove obsolete provisions, (3) clarify existing appellate procedures, (4) update and clarify management contract procedures and costs for background investigations, (5) clarify various definitions and licensing notices, (6) update audit requirements to allow for simplified and consolidated reporting in certain circumstances, and (7) add gaming on ineligible lands to the class of substantial violations warranting immediate closure. The final rule is discussed below.

A. Definitions

NIGC regulations define ''key employee'' at 25 CFR 502.14. Applicants for positions defined as key employees are, among other things, subject to a background investigation as a condition of licensure. Under present regulations, this list of key employees is limited. With the addition of ''any other person designated by the tribe as a key employee,'' this section will allow tribes to expand the list and access the criminal history records held by the federal government for the purpose of conducting background investigations on these additional key employees.

IGRA and NIGC regulations define ''net revenue'' as ''gross gaming revenues of an Indian gaming operation less amounts paid out as, or paid for, prizes; and total gaming-related operating expenses, excluding management fees.'' 25 U.S.C. 2703(9); 25 CFR 502.16. The final rule amends 25 CFR 502.16 to define net revenues as previously seen in the regulations but clarifying what constitutes operating expenses and what does not.

The final rule incorporates the industry understanding of what constitutes an operating expense in order to clarify what constitutes net revenues for a gaming operation.

The NIGC's regulations define a ''person having a direct or indirect financial interest in a management contract'' to include holders of at least 10% of the issued and outstanding stock alone. The final rule reduces the requisite financial interest to five percent for publicly traded companies so as to be consistent with the Securities and Exchange Commission's understanding of a ''significant shareholder.'' This change is also consistent with similar requirements in other gaming jurisdictions.

NIGC regulations define ''primary management official'' at 25 CFR 502.19. Applicants for positions defined as primary management officials are, among other things, subject to a background investigation as a condition of licensure. Under present regulations, this list of primary management officials is limited. With the addition of ''any other person designated by the tribe as a primary management official,'' this section will allow tribes to expand the list and access the criminal history records held by the federal government for the purpose of conducting background investigations on these additional primary management officials.

B. Annual Fees Required

IGRA requires the NIGC to set an annual funding rate. 25 U.S.C. 2717. NIGC implements this requirement under 25 CFR part 514, which requires tribal submissions of fees four times per year. The final rule reduces the number of fee submissions by half. That said, submitting fee statements and payments twice per year under sections 514.1(c)(2) and 514.1(d) is not required until January 1, 2010.

In addition, the final rule requires that fees be sent on or before their due dates. This is a change from the previous requirement that NIGC actually receive fees on or before their due dates. Fees and statements must now be postmarked by their due dates. If using a private delivery service, such as FedEx or UPS, then the shipping receipt must be dated on or before the due date.

C. Content of Management Contracts

IGRA and NIGC regulations require specific provisions in a management contract, and its accompanying submission package, before the Chairman can approve it. 25 U.S.C. 2711; 25 CFR 531.1, 533.3. The Chairman must also approve any amendment to a management contract. 25 CFR 535.1, 535.3. In applying for approval, all persons having a financial interest in, or management responsibility for, a management contract must be disclosed to the Commission and must undergo a background investigation. 25 CFR 537.1. Management contractors must pay for this investigation. 25 CFR 537.3. If the Chairman disapproves a management

contract or amendment, the tribe or contractor may appeal. 25 CFR 539.1, 539.2.

The final rule updates 25 CFR 531.1, 533.1, 533.3, and 533.7 by removing language regarding the Secretary of the Interior's approval of management contracts. Because the Secretary no longer fulfills that role, the NIGC is eliminating unnecessary references in sections 531.1, 533.1, 533.3, and 533.7 to the Secretary's former authority. Further, section 533.5 permits the Chairman to take action on noncompliant management contracts previously approved by the Secretary. Because no management contracts approved by the Secretary remain active, section 533.5 is obsolete, and the final rule removes it.

Additionally, the final rule updates section 533.3 to reflect the existing practice of providing a legal description for the land upon which the gaming facility operates or will operate. This allows the Commission to determine whether a management contract references a site that is ''Indian lands'' eligible for gaming as required under IGRA.

The final rule changes § 537.3 to increase the fee for background investigations. This updates the fee and more accurately reflects the Commission's actual costs.

Finally, the final rule replaces the words ''modification'' and ''modify'' with ''amendment'' and ''amend'' in §§ 535.1, 535.3, 539.1, and 539.2 for purposes of internal consistency.

D. Background and Licensing for Primary Management Officials and Key Employees

IGRA requires that tribes, through their gaming ordinances, maintain an adequate system of background investigations. 25 U.S.C. 2710(b)(2)(F). NIGC regulations, 25 CFR parts 556 and 558, implement this requirement. The final rule removes language in 25 CFR 556.2, 556.3 and 558.2 referring to the employment of individuals as key employees and primary management officials and replaces it with language referring to their licensure instead. The reason for this is that a decision to license an applicant and a decision about an applicant's suitability (or eligibility) for licensure is separate and distinct from a decision to hire the applicant. The Commission believes that these sections should be concerned with licensure and suitability determinations, not employment decisions.

The granting of a license is a privilege and the burden of proving suitability is on the applicant. In doing so, the applicant typically provides much more comprehensive personal information on a license application than is normally required on an employment application. Thus, these changes redraw the distinction between employment and licensure, making it clear when an applicant must provide more detailed information and when this Commission may share applicant information.

As stated in the notice required by the proposed 25 CFR 556.2, application information may be ''disclosed * * * in connection with the issuance, denial, or revocation of a gaming license. * * *'' As such, the information could not, without otherwise complying with the requirements of the Privacy Act, 5 U.S.C. 552a, be provided to support employment decisions by prospective or current employers of the license applicant. This is a change from prior practice. Under the NIGC's existing regulations, application information can be disclosed in connection with the hiring and firing of an employee.

Finally, the amendments to 25 CFR 556.2, 556.3 and 558.2 will have implications for tribal gaming ordinances, but not immediately. Upon the effective date, tribes do not have to immediately amend their gaming ordinances. However, following the effective date, whenever tribes amend their gaming ordinances, they must also make amendments conforming to the language in these sections.

E. Monitoring and Investigating

IGRA requires ordinances submitted for the Chairman's review to contain a provision requiring an annual audit. 25 U.S.C. 2710(b)(2). The NIGC's regulation, 25 CFR 571.12, creates standard procedures for the submission of the annual audit to the Commission, and § 571.13 deals with how and when a tribe submits an audit statement. The final rule still requires tribes to contract with independent certified public accountants that use Generally Accepted Accounting Principles and Generally Accepted Accounting Standards to complete their audits. However, the final rule allows tribes with multiple facilities to consolidate their audit statements into one. Further, the final rule allows operations earning less than $2 million in gross gaming revenue to file an abbreviated statement. The final rule also allows a tribe to submit an electronic version of an audit for so called ''stub periods'' of less than one year.

Finally, the final rule requires that audits and financial statements be sent on or before their due dates. This is a change from the previous requirement that NIGC actually receive the audits and statements on or before their due dates. Audits and statements must now be postmarked by their due dates. If using a private delivery service, such as FedEx or UPS, then the shipping receipt must be dated on or before the due date. The final rule reflects common sense practice and reduces tribal costs and burden hours.

NIGC regulation 25 CFR 573.6 discusses the Chairman's ability to close a gaming operation for any listed substantial IGRA violation. The final rule adds one substantial violation to the list. The Chairman may now issue a temporary closure order for a gaming operation that operates on Indian land not eligible for gaming under IGRA. Indian gaming under IGRA must occur on ''Indian lands,'' 25 U.S.C. 2710(a), (b) and (d), as IGRA defines that term. 25 U.S.C. 2703(4). If Indian land is trust land acquired after October 17, 1988 (''after-acquired land''), then the land is eligible for gaming only if it meets one of the exceptions provided in 25 U.S.C. 2719. A gaming operation that operates on after-acquired trust land that does not meet one of the exceptions in section 2719 is in violation of IGRA. Operating illegally in this way is a substantial violation of IGRA that warrants immediate closure.

Regulatory Matters

Regulatory Flexibility Act

The Regulatory Flexibility Act, 5 U.S.C. 601 *et seq.*, requires that an agency prepare a regulatory flexibility analysis of any rule subject to notice and comment rulemaking requirements under the Administrative Procedure Act or any other statute, unless the agency certifies that the rule will not have a significant economic impact on a substantial number of small entities.

For purposes of assessing the impact of the final rule, ''small entity'' is defined as: (1) A small business that meets the definition of a small business found in the Small Business Act and codified at 13 CFR 121.201; (2) a small governmental jurisdiction that is a government of a city, county, town, school district or special district with a population of less than 50,000; and (3) a small organization that is any not-for-profit enterprise that is independently owned and operated and is not dominant in its field.

Indian tribes and tribal casinos do not meet this definition. Tribes are excluded from the governmental jurisdictions listed under (2), and tribally owned casinos are not ordinary commercial activities but are tribal governmental operations.

As a practical matter here, the cost increases of the final rule take the form of increased fees for management contractors' background investigations. The economic impact of these is not significant as the fees, currently below industry norms, are raised to meet them, and the effect is limited to only management contracting entities. These are by no means substantial in number, and, generally, do not fall within the definition of ''small entity'' as defined by the Small Business Act. Accordingly, the Commission certifies that this action will not have a significant economic impact on a substantial number of small entities.

Small Business Regulatory Enforcement Fairness Act

The final rule is not a major rule under 5 U.S.C. 804(2), the Small Business Regulatory Enforcement Fairness Act. The rule does not have an annual effect on the economy of $100 million or more. The rule will not cause a major increase in costs or prices for consumers, individual industries, federal, state, local government agencies, or geographic regions. Nor will the final rule have a significant adverse effect on competition, employment, investment, productivity, innovation, or the ability of the enterprises to compete with foreign-based enterprises.

Unfunded Mandates Reform Act

The Commission, as an independent regulatory agency within the Department of the Interior, is exempt from compliance with the Unfunded Mandates Reform Act. 2 U.S.C. 1502(1); 2 U.S.C. 658(1). Regardless, the final rule does not impose an unfunded mandate on state, local, tribal governments, or on the private sector of more than $100 million per year. Thus, it is not a ''significant regulatory action'' under the Unfunded Mandates Reform Act.

Civil Justice Reform

In accordance with Executive Order 12988, the Office of General Counsel has determined that the final rule does not unduly burden the judicial system, and it meets the requirements of section 3(a) and 3(b)(2) of that order.

National Environmental Policy Act

The Commission has determined that the final rule does not constitute a major federal action significantly affecting the quality of the human environment and no detailed statement is required pursuant to the National Environmental Policy Act of 1969, 42 U.S.C. 4321 *et seq.*

Paperwork Reduction Act

The final rule does not require any significant changes in information collection under the Paperwork Reduction Act of 1995, 44 U.S.C. 3501 *et seq.* The information collections in the affected regulations are included within OMB control numbers 3141–0001 for part 571; 3141–0003 for parts 556 and 558; 3141–0004 for parts 531, 533, 535, 537, 539; and 3141–0007 for part 514.

Review of Public Comments

A number of commenters made editorial suggestions that improved consistency within the final rule. These changes were accepted and did not change the substance of the final rule. Substantive changes and suggestions are addressed below.

General Comments

Comment: Eight commenters objected generally to any promulgation of regulations by the NIGC, stating that such action violated tribal sovereignty. Further, the commenters also stated that the NIGC had failed to consult tribes in crafting these changes. The commenters requested complete withdrawal of these regulations, including regulations passed in 1993 that the NIGC has not proposed to amend.

Response: The Commission does not agree that making these slight modifications to its existing regulations violates tribal sovereignty. Under IGRA, tribes and the NIGC share dual regulatory roles, and the NIGC is statutorily authorized to issue regulations. Thus, the Commission does not feel that it is appropriate to withdraw the final rule. Further, as to those regulations passed in 1993 that were not addressed in the proposed rule, they have served Indian gaming well for 16 years, and the Commission sees no reason to withdraw them now.

As to a failure of consultation, the Commission strongly disagrees. The NIGC has spent the last two years consulting with tribes on the updates. The Commission alerted tribes to the changes in March 2007, has asked them for review and comment, and has incorporated tribal suggestions into each successive draft. Further, the Commission has met with tribes all over the country to discuss the regulations, or anything else that tribal leaders desired to discuss. Comments from those discussions were incorporated into the final rule.

Comment: The NIGC has received comments that are generally supportive of these updated rules.

Response: The Commission appreciates the support and is grateful to everyone who commented, both on the proposed rule and in response to the earlier draft sent to tribal leaders.

Comment: Nine commenters cited to a White House memorandum signed by Chief of Staff Rahm Emanuel on January 20, 2009, stating that it advocated for the immediate withdrawal of all pending regulations. Thus, the commenters insisted that the proposed rule could not go forward.

Response: The Commission disagrees. The commenters incorrectly refer to this memorandum as an executive order, which it is not. Further, the memorandum does not ask agencies to withdraw all pending regulations. Rather, it says something far narrower, asking for the withdrawal of proposed regulations that had not already been published in the **Federal Register** by January 20, 2009. This proposed rule was published in the **Federal Register** on December 22, 2008, almost one month prior to the memorandum.

Additionally, the memorandum asks agencies to extend the comment periods for any proposed rules pending. The Commission had done just that and extended the comment period for the proposed rule as published in the **Federal Register**. *See* 74 FR 4363 (January 26, 2009). Finally, the Commission continues to comply with the memorandum and keep the Administration informed as to the final rule.

Specific Comments

Comment: Some commenters requested that the definition for ''net revenues'' in 25 CFR 502.16 include the words ''gaming-related'' in order to make clear that the Commission's jurisdiction extends only to gaming revenues.

Response: The Commission agrees and incorporated this change into the final rule.

Comment: Ten commenters claimed that the NIGC has no authority to change the definition of ''net revenues'' in 25 CFR 502.16 because Congress has already defined the term.

Response: The Commission is not changing the definition of net revenue. It is, rather, preserving the original meaning of the term in IGRA in light of changes in professional accounting pronouncements that make the term ambiguous. What is more, that ambiguity has the potential to improperly increase management contract fees.

When IGRA was enacted, the definition of net revenue reflected the accounting profession's understanding of ''operating expenses'' as including all expenses incurred by a business.

Subsequently, however, the accounting profession changed its understanding of the term.

The American Institute of Certified Professional Accountants (AICPA) reasoned that not all expenses are alike. Some expenses are directly tied to increases and decreases in the economic activity of a business, and hence its ability to produce revenue. Examples of these include salaries, utilities, and advertising. Presumably, an increase in these expenses—say, in a period of expansion for the business—should ultimately result in the business producing more revenue. AICPA called these expenses ''operating expenses,'' and thus the term has come to refer to a smaller class of expenses than it did when IGRA was adopted.

Other expenses are not so closely tied to a business's economic activity and revenue production. For example, a business's interest obligation on a loan may increase with a change in the prime rate, and this does not represent an expansion of business activity at all. These latter expenses AICPA now calls ''non-operating expenses.''

Under IGRA, ''net revenue'' is calculated by deducting prizes and ''operating expenses'' from gross revenue. ''Operating expenses,'' however, has become ambiguous because of the change in AICPA's understanding of the term. Thus, the question arises whether to calculate net revenues by deducting ''operating expenses'' as the term was understood at the time IGRA was adopted or as the term is understood now.

If you apply the current understanding and remove interest and the like—the ''non-operating'' expenses—from the calculation of net revenue, the result is improperly high management contract fees. The expenses deducted from gross revenues become smaller, and net revenues, which form the basis for calculating management fees, are overstated.

This is the result the Commission intends to prevent. The amendment to 502.16 is intended to ensure that net revenues are calculated by using AICPA's original understanding and deducting as ''operating expenses'' all of the expenses incurred by a business—by deducting, in other words, what AICPA now calls ''operating expenses'' and ''non-operating expenses.''

Comment: Fifteen commenters objected to the definition of ''Person having a direct or indirect financial interest in a management contract,'' 25 CFR 502.17 as unduly burdensome to tribes. Tribal commenters argued that the definition could make it impossible for tribal entities to manage a gaming operation because the definition can be read to include all tribal members. Thus, they argue, when a tribal entity is the manager, all tribal members would be subject to background investigations and suitability determinations.

Response: The Commission does not agree. The language in 502.17(e) to which the commenters refer is the same language adopted in 1993. The Commission has not proposed any changes to it, and it sees no reason to change the language now. The Commission has never interpreted this section to include the entire membership of a tribe for purposes of determining who ''has an interest'' in a management contract and thus who needs to undergo a background investigation.

The Commission proposed only two changes here. One was to lower the threshold for corporate stockholders included in the definition of ''persons with a direct or indirect financial interest'' from persons owning 10% of stocks to 5% of stocks. The other was to add persons receiving gifts.

Comment: These same commenters objected to the change in section 502.17 that allows the agency to conduct background investigations on persons with 5% or more interest in the management contract, a change from the previous 10% interest. The commenters argued that this change appeared arbitrary and would increase the time needed to complete the approval process by increasing the number and costs of required background investigations.

Response: The Commission disagrees. It feels that the changes do not create significant cost increases for tribes because the management contractor pays for the background investigations conducted on their principals. While the change may require a greater number of background investigations, the increased workload falls on the Commission staff conducting the background investigations. The Commission feels that the increase in workload is offset by the benefit of protecting the integrity of Indian gaming. Finally, eight commenters expressly agreed with the changes presented in this section.

Comment: Nine commenters objected to the changes in filing fee statements under 25 CFR 514.1 and cited to *Colorado River Indian Tribe* v. *National Indian Gaming Commission (CRIT),* 383 F. Supp 2d 123 (D.D.C. 2005), aff'd 466 F. 3d 134 (D.C. Cir. 2006), for the proposition that the NIGC does not possess authority to apply these changes to Class III gaming operations.

Response: The Commission disagrees. The commenters incorrectly understand CRIT to hold that NIGC has no authority over Class III gaming. CRIT, however, only holds that NIGC lacks the authority to promulgate and enforce minimum internal control standards for most Class III gaming operations. 383 F. Supp 2d 123, 132 (D.D.C. 2005). CRIT did not strip the NIGC of the power to regulate Class III gaming generally. Rather, it stands for the proposition that NIGC, like every other administrative agency, has only those authorities Congress has granted to it. The NIGC has continued to regulate the industry consistent with IGRA's provisions, and IGRA specifically gives the Commission the authority to assess fees on Class III gaming. 25 U.S.C 2717(a)(1). Finally, six commenters agreed with the changes to 514.1.

Comment: Nine commenters objected to the requirement in 25 CFR 514.1 that fees and fee statements actually be received by NIGC on or before the due dates, preferring instead to apply the mailbox rule. This would mean that fee payments and statements are timely so long as they are mailed by their due dates, no matter how long those documents take to arrive.

Response: The Commission agrees. The final rule now requires that fees and fee statements be sent on or before their due dates. Fees and fee statements must now be postmarked by their due dates. If using a private delivery service, such as FedEx or UPS, then the shipping receipt must be dated on or before the due date.

Comment: Six commenters objected to the requirements that management contracts set operating days and hours as well as the advertising and placing budgets under 25 CFR 531.1(b)(3) and (10). Specifically, commenters asserted that these requirements were indicative of NIGC overreaching its authority and asked too much of tribes and potential contractors.

Response: The Commission disagrees. None of the language in 531.1(b) was changed from the original language adopted in 1993. The requirements that management contracts must contain provisions regarding days and hours of operation, as well as provisions on advertising and placing budgets, has always existed in the Commission's regulations. The Commission sees no reason to change that language now. Finally, two commenters specifically agreed with the changes presented in 531.1.

Comment: Five commenters noted that 25 CFR 533.2 gave tribes only 30 days to submit contracts for

management approval and felt that the timeline was too stringent.

Response: The Commission understands that the parties to a management contract may desire more time and thinks that it is fair to allow a longer time for submission. Thus, the Commission has changed this section to allow for the submission of management contracts within 60 days of their execution.

Comment: Twelve commenters objected to the requirement in 25 CFR 533.3(h) that the parties to a management contract submit a legal description of the land on which the gaming is to take place. The requirement, they felt, was burdensome and unnecessary. Commenters instead preferred the idea of having the Chairman approve management contracts without a legal description in case the parties chose a different site for construction or needed more time to finalize the land-into-trust process.

Response: The Commission disagrees. The NIGC routinely requests land descriptions for all management contracts. Since all management contracts are site-specific, the Chairman needs to have this legal description to determine whether the gaming operation will reside on Indian lands as IGRA requires. The Chairman does not normally approve management contracts prior to land being taken into trust. Consequently, this change simply clarifies agency practice.

Comment: Seven commenters objected to the 90-day extension permitted to the Chairman for his decision on a management contract under 25 CFR 533.4 because it allows the Chairman too much time. The commenters insisted that the standard 180 days for approval was long enough.

Response: The Commission disagrees. The 90-day extension that the commenters object to is the original language of the regulations adopted in 1993. The changes to this section do not involve this timeline, and the Commission feels no need to revisit the question now.

Comment: One commenter objected to 25 CFR 535.3 and 537.1 on grounds that they violated tribal sovereignty and were too burdensome.

Response: The Commission disagrees. The commenter failed to explain what changes were problematic or why these changes violate sovereignty or burden the tribes. Further, the changes made to these two sections do not impede tribal sovereignty. The changes to section 535.3 indicate that the Chairman can void management contract amendments as well as approve them, a power given to him by IGRA. 25 U.S.C. 2711. Thus, this change merely clarifies the Chairman's existing authority.

Furthermore, the changes to section 537.1 merely require a management contractor to disclose its ten largest stock holders, their relations, and managers, regardless of corporate form. This is a clarification of an existing obligation. In fact, much of the text of these two sections remains unchanged from the original language adopted in 1993. Finally, two commenters agreed with the changes.

Comment: Six commenters objected to the language in 25 CFR 535.1 that states: ''If the Chairman does not approve or disapprove an amendment within the timelines of paragraph (d)(1) or (d)(2) of this section, the amendment shall be deemed disapproved.'' The commenters asserted that the Chairman's failure to act on these contracts should make them ''deemed approved'' by operation of law instead of ''deemed disapproved.'' They requested that the NIGC make this change to this section.

Response: The Commission disagrees. This language has not changed from the language adopted in 1993 and has always read that the Chairman can ''approve or disapprove'' the amendment at issue and that the amendment will be ''deemed disapproved'' if he fails to act. The Commission sees no reason to change this now.

Comment: Twelve commenters objected to the increase in fees for background investigations from $10,000 to $25,000 under 25 CFR 537.3. The commenters suggested that the fee was too high and caused too great a burden on tribes. They advised that the fee should remain the same.

Response: The Commission disagrees. The change represents the amount of the deposit made for the background investigations rather than an increase in fees. Furthermore, typically, contractors pay for their background investigations, and not the tribes. Furthermore, even if a tribe chooses to reimburse a contractor for the costs, the deposit presented in the final rule has been changed to reflect the actual costs of performing this service.

Comment: One commenter objected to the ability of a party to appeal the Chairman's approval of a management contract or amendment under 25 CFR 539.2. Originally, this section only permitted appeals for disapprovals of management contracts and amendments. The commenter requested that this language be removed for fear that state and local governments might be considered a party for purposes of appealing under this section and challenging an approved management contract or amendment.

Response: The Commission disagrees. While the Commission anticipates that this addition will be used infrequently, the amendment was made to acknowledge the possibility that parties may question the propriety of a contract approval. This section does not give standing to an entity that was not a party to the management contract or amendment. The amended section merely recognizes a practical necessity and reflects existing practices.

Comment: Two commenters stated that 25 CFR 558.2 needed clarification because the language appeared to indicate that someone other than a gaming commission could license gaming employees.

Response: The Commission agrees and has altered the language in the final rule accordingly.

Comment: Twenty-three commenters objected to the changes presented in 25 CFR 556.2, 556.3, and 558.2. The commenters insisted that the NIGC lacks the authority to change these sections because the changes would require tribes to specifically amend their ordinances in contravention of their status as a sovereign.

The commenters also asserted that in replacing the word ''employment'' with the word ''licensing'' throughout these sections, the Commission was making a mistake. They argued that changing these words incorrectly indicated that the Privacy Act and False Statement Act now apply to tribes. Finally, the commenters argued that using these sections for employment purposes was convenient for their needs.

Response: The Commission does not agree. The final rule is not retroactive and does not require any tribe to immediately amend its gaming ordinance. Rather, the amendments need only be made when a tribe otherwise chooses to amend its gaming ordinance. Thus, the final rule states that tribal gaming ordinances and ordinance amendments that have been approved by the Chairman * * * and that reference this rulemaking will not need to be amended to comply with this section. All future ordinance submissions, however, must comply.

Furthermore, the Privacy Act notice and False Statement Act notice have been required as part of NIGC regulations since they were adopted in 1993. The Commission is only changing the word ''employment'' to ''licensing.'' None of the changes alter the application of these Acts. Because tribes access personally identifiable information through the NIGC, they

have agreed to the Privacy Act and False Statement Act restrictions.

Finally, the emphasis here is on licensing and not employment. A decision to license an applicant and a decision about an applicant's suitability (or eligibility) for licensure are separate and distinct from a decision to hire the applicant. We have concluded that these sections should be concerned with licensure and suitability determinations, not employment decisions.

Comment: Ten commenters objected to the changes for filing audits under 25 CFR 571.12 and cited the *Colorado River Indian Tribe* v. *National Indian Gaming Commission (CRIT),* 383 F. Supp 2d 123 (D.D.C. 2005), aff'd 466 F. 3d 134 (D.C. Cir 2006), for the proposition that the NIGC does not possess authority to apply these changes to Class III gaming operations.

Response: The Commission disagrees. The commenters incorrectly understand CRIT to hold that NIGC has no authority over Class III gaming. CRIT, however, only holds that NIGC lacks the authority to promulgate and enforce minimum internal control standards for Class III gaming operations. 383 F. Supp 2d 123, 132 (D.D.C. 2005). CRIT did not strip the NIGC of the power to regulate Class III gaming generally. Rather, it stands for the proposition that NIGC, like every other administrative agency, has only those authorities Congress has granted to it. The NIGC has continued to regulate the industry consistent with IGRA's provisions, and IGRA requires Class II and Class III operations to file annual audits. 25 U.S.C. 2710(b)(2)(C); 2710(d)(1)(A)(ii). Finally, five commenters agreed with the changes to 571.12.

Comment: Ten commenters objected to the requirement in 25 CFR 571.12 that audit statements actually be received by NIGC on or before the due dates, preferring instead to apply the mailbox rule. This would mean that audit statements are timely so long as they are mailed by the due dates, no matter how long those documents take to arrive.

Response: The Commission agrees. The final rule now requires that audits and financial statements be sent on or before their due dates. Audit statements must now be postmarked by their due dates. If using a private delivery service, such as FedEx or UPS, then the shipping receipt must be dated on or before the due date.

Comment: Three commenters objected to the new requirement for a written statement as requested under 25 CFR 571.12(c)(3), (d)(5), and (e)(5). They insisted that the requirement was unnecessary and that the requirement was vaguely worded. Without further explanation, the requirement could cause further non-compliance as tribes attempt to understand the scope of what is required in the statement.

Response: The Commission agrees. The Commission is convinced by the arguments presented and has altered the final rule to delete these section requirements.

Comment: One commenter noted that the word ''reports'' appeared in the 1993 version of this section but no longer appears in the proposed rule published in December 2008. The commenter suggested that 25 CFR 571.13 include the word ''reports'' again because it captures more broadly the documents compiled by the certified public accountant when conducting an audit.

Response: The Commission agrees. The Commission has altered the final rule to put the word ''reports'' back in the relevant section.

Comment: Ten commenters objected to the addition of gaming on ineligible lands as a substantial violation under 25 CFR 573.6. Commenters argued that the Commission could not claim that gaming on ineligible lands is a substantial IGRA violation when it routinely permits operations to continue running after it is discovered that they exist on ineligible lands. The commenters asserted that the regulation was also duplicative because gaming occurring on ineligible lands is an issue that could be handled by parties other than the NIGC. Further, they suggested that the additional enforcement power for the Chairman creates confusion as to authority between the NIGC and the Department of the Interior (DOI) on this issue. A split decision between the departments could cause problems for tribes.

Response: The Commission disagrees. First, the Chairman does not routinely permit the operation of gaming on ineligible lands under IGRA. Next, the addition is not duplicative, and there is no additional power given to the Chairman. The Chairman already has the authority to close an operation running on ineligible lands. Under existing regulations, closure is a two-step process. The Chairman first has to issue a notice of violation. He may subsequently order closure if the operation on ineligible lands continues. Under the change here, the Chairman may issue a notice of violation and closure order simultaneously. The change thus merely adds operating on ineligible lands to the list of serious violations that justify immediate closure. Finally, there is no confusion between DOI and NIGC. Regardless of which agency makes the decision as to whether lands qualify for gaming, only the NIGC has the authority to close a gaming operation.

List of Subjects in 25 CFR Parts 502, 514, 531, 533, 535, 537, 539, 556, 558, 571

Gambling, Indians—lands, Indians—tribal government, Reporting and recordkeeping requirements.

■ For the reasons set forth in the preamble, the Commission amends its regulations at 25 CFR Chapter III as follows:

PART 502—DEFINITIONS OF THIS CHAPTER

■ 1. The authority citation for part 502 continues to read as follows:

Authority: 25 U.S.C. 2701 *et seq.*

■ 2. Add new paragraph (d) to § 502.14 to read as follows:

§ 502.14 Key employee.

* * * * *

(d) Any other person designated by the tribe as a key employee.

■ 3. Revise § 502.16 to read as follows:

§ 502.16 Net revenues.

Net revenues means gross gaming revenues of an Indian gaming operation less—

(a) Amounts paid out as, or paid for, prizes; and

(b) Total gaming-related operating expenses, including all those expenses of the gaming operation commonly known as operating expenses and non-operating expenses consistent with professional accounting pronouncements, excluding management fees.

■ 4. Revise § 502.17 to read as follows:

§ 502.17 Person having a direct or indirect financial interest in a management contract.

Person having a direct or indirect financial interest in a management contract means:

(a) When a person is a party to a management contract, any person having a direct financial interest in such management contract;

(b) When a trust is a party to a management contract, any beneficiary or trustee;

(c) When a partnership is a party to a management contract, any partner;

(d) When a corporation is a party to a management contract, any person who is a director or who holds at least 5% of the issued and outstanding stock alone or in combination with another stockholder who is a spouse, parent, child or sibling when the corporation is publicly traded or the top ten (10)

shareholders for a privately held corporation;

(e) When an entity other than a natural person has an interest in a trust, partnership or corporation that has an interest in a management contract, all parties of that entity are deemed to be persons having a direct financial interest in a management contract; or

(f) Any person or entity who will receive a portion of the direct or indirect interest of any person or entity listed above through attribution, grant, pledge, or gift.

■ 5. Add new paragraph (d) to § 502.19 to read as follows:

§ 502.19 Primary management official.

* * * * *

(d) Any other person designated by the tribe as a primary management official.

PART 514—FEES

■ 6. The authority citation for part 514 continues to read as follows:

Authority: 25 U.S.C. 2706, 2708, 2710, 2717, 2717a.

■ 7. Revise § 514.1 to read as follows:

§ 514.1 Annual fees.

(a) Each gaming operation under the jurisdiction of the Commission shall pay to the Commission annual fees as established by the Commission. The Commission, by a vote of not less than two of its members, shall adopt the rates of fees to be paid.

(1) The Commission shall adopt preliminary rates for each calendar year no later than February 1st of that year, and, if considered necessary, shall modify those rates no later than July 1st of that year.

(2) The Commission shall publish the rates of fees in a notice in the **Federal Register**.

(3) The rates of fees imposed shall be—

(i) No more than 2.5 percent of the first $ 1,500,000 (1st tier), and

(ii) No more than 5 percent of amounts in excess of the first $1,500,000 (2nd tier) of the assessable gross revenues from each gaming operation subject to the jurisdiction of the Commission.

(4) If a tribe has a certificate of self-regulation, the rate of fees imposed shall be no more than .25 percent of assessable gross revenues from self-regulated class II gaming operations.

(b) For purposes of computing fees, assessable gross revenues for each gaming operation are the annual total amount of money wagered on class II and III games, admission fees (including table or card fees), less any amounts paid out as prizes or paid for prizes awarded, and less an allowance for amortization of capital expenditures for structures.

(1) Unless otherwise provided by the regulations, generally accepted accounting principles shall be used.

(2) The allowance for amortization of capital expenditures for structures shall be either:

(i) An amount not to exceed 5% of the cost of structures in use throughout the year and 2.5% (two and one-half percent) of the cost of structures in use during only a part of the year; or

(ii) An amount not to exceed 10% of the cost of the total amount of amortization/depreciation expenses for the year.

(3) Examples of computations follow:

(i) For paragraph (2)(i) of this section:

Gross gaming revenues:		
Money wagered		$1,000,000
Admission fees	5,000	
		1,005,000
Less:		
Prizes paid in cash	$500,000	
Cost of other prizes awarded	10,000	510,000
Gross gaming profit		495,000
Less allowance for amortization of capital expenditures for structures:		
Capital expenditures for structures made in—		
Prior years	750,000	
Current year	50,000	
Maximum allowance:		
$750,000 × .05 =	37,500	
50,000 × .025 =	1,250	38,750
Assessable gross revenues		456,250

(ii) For paragraph (2)(ii) of this section:

Gross gaming revenues:		
Money wagered		$1,000,000
Admission fees	5,000	1,005,000
Less:		
Prizes paid in cash	$500,000	
Cost of other prizes awarded	10,000	510,000
Gross gaming profit		495,000
Less allowance for amortization of capital expenditures for structures:		
Total amount of amortization/depreciation per books	400,000	
Maximum allowance:		
$400,000 × .10 =		40,000
Gross gaming revenues		455,000
Assessable gross revenues		455,000

(4) All class II and III revenues from gaming operations are to be included.

(c) Each gaming operation subject to the jurisdiction of the Commission and not exempt from paying fees pursuant to the self-regulation provisions shall file with the Commission a statement

showing its assessable gross revenues for the previous calendar year.

(1) These statements shall show the amounts derived from each type of game, the amounts deducted for prizes, and the amounts deducted for the amortization of structures;

(2) These statements shall be sent to the Commission on or before March 1st and August 1st of each calendar year.

(3) The statements shall identify an individual or individuals to be contacted should the Commission need to communicate further with the gaming operation. The telephone numbers of the individual(s) shall be included.

(4) Each gaming operation shall determine the amount of fees to be paid and remit them with the statement required in paragraph (c) of this section. The fees payable shall be computed using—

(i) The most recent rates of fees adopted by the Commission pursuant to paragraph (a)(1) of this section,

(ii) The assessable gross revenues for the previous calendar year as reported pursuant to this paragraph, and

(iii) The amounts paid and credits received during the year.

(5) Each statement shall include the computation of the fees payable, showing all amounts used in the calculations. The required calculations are as follows:

(i) Multiply the previous calendar year's 1st tier assessable gross revenues by the rate for those revenues adopted by the Commission.

(ii) Multiply the previous calendar year's 2nd tier assessable gross revenues by the rate for those revenues adopted by the Commission.

(iii) Add (total) the results (products) obtained in paragraphs (c)(5)(i) and (ii) of this section.

(iv) Multiply the total obtained in paragraph (c)(5)(iii) of this section by ½.

(v) The amount computed in paragraph (c)(5)(iv) of this section is the amount to be remitted.

(6) Examples of fee computations follow:

(i) Where a filing is made for March 1st of the calendar year, the previous year's assessable gross revenues are $2,000,000, the fee rates adopted by the Commission are 0.0% on the first $1,500,000 and .08% on the remainder, the amounts to be used and the computations to be made are as follows:

1st tier revenues—$1,500,000 × 0.0% =	
2nd tier revenues—500,000 × .08% =	$400
Annual fees	400
Multiply for fraction of year—½ or	.50
Fees for first payment	200
Amount to be remitted	200

(7) The statements, remittances and communications about fees shall be transmitted to the Commission at the following address: Office of Finance, National Indian Gaming Commission, 1441 L Street, NW., Suite 9100, Washington, DC 20005. Checks should be made payable to the National Indian Gaming Commission (do not remit cash).

(8) The Commission may assess a penalty for failure to file timely a statement.

(9) Interest shall be assessed at rates established from time to time by the Secretary of the Treasury on amounts remaining unpaid after their due date.

(d) The total amount of all fees imposed during any fiscal year shall not exceed the statutory maximum imposed by Congress. The Commission shall credit pro-rata any fees collected in excess of this amount against amounts otherwise due by March 1st and August 1st of each calendar year.

(e) Failure to pay fees, any applicable penalties, and interest related thereto may be grounds for:

(1) Closure, or

(2) Disapproving or revoking the approval of the Chairman of any license, ordinance, or resolution required under this Act for the operation of gaming.

(f) To the extent that revenue derived from fees imposed under the schedule established under this paragraph are not expended or committed at the close of any fiscal year, such funds shall remain available until expended to defray the costs of operations of the Commission.

PART 531—CONTENT OF MANAGEMENT CONTRACTS

■ 8. The authority citation for part 531 continues to read as follows:

Authority: 25 U.S.C. 81, 2706(b)(10), 2710(d)(9), 2711.

■ 9. Revise § 531.1 to read as follows:

§ 531.1 Required provisions.

Management contracts shall conform to all of the requirements contained in this section in the manner indicated.

(a) *Governmental authority.* Provide that all gaming covered by the contract will be conducted in accordance with the Indian Gaming Regulatory Act (IGRA, or the Act) and governing tribal ordinance(s).

(b) *Assignment of responsibilities.* Enumerate the responsibilities of each of the parties for each identifiable function, including:

(1) Maintaining and improving the gaming facility;

(2) Providing operating capital;

(3) Establishing operating days and hours;

(4) Hiring, firing, training and promoting employees;

(5) Maintaining the gaming operation's books and records;

(6) Preparing the operation's financial statements and reports;

(7) Paying for the services of the independent auditor engaged pursuant to § 571.12 of this chapter;

(8) Hiring and supervising security personnel;

(9) Providing fire protection services;

(10) Setting advertising budget and placing advertising;

(11) Paying bills and expenses;

(12) Establishing and administering employment practices;

(13) Obtaining and maintaining insurance coverage, including coverage of public liability and property loss or damage;

(14) Complying with all applicable provisions of the Internal Revenue Code;

(15) Paying the cost of any increased public safety services; and

(16) If applicable, supplying the National Indian Gaming Commission (NIGC, or the Commission) with all information necessary for the Commission to comply with the regulations of the Commission issued pursuant to the National Environmental Policy Act (NEPA).

(c) *Accounting.* Provide for the establishment and maintenance of satisfactory accounting systems and procedures that shall, at a minimum:

(1) Include an adequate system of internal accounting controls;

(2) Permit the preparation of financial statements in accordance with generally accepted accounting principles;

(3) Be susceptible to audit;

(4) Allow a gaming operation, the tribe, and the Commission to calculate the annual fee under § 514.1 of this chapter;

(5) Permit the calculation and payment of the manager's fee; and

(6) Provide for the allocation of operating expenses or overhead expenses among the tribe, the tribal gaming operation, the contractor, and any other user of shared facilities and services.

(d) *Reporting.* Require the management contractor to provide the tribal governing body not less frequently than monthly with verifiable financial reports or all information necessary to prepare such reports.

(e) *Access.* Require the management contractor to provide immediate access to the gaming operation, including its books and records, by appropriate tribal officials, who shall have:

(1) The right to verify the daily gross revenues and income from the gaming operation; and

(2) Access to any other gaming-related information the tribe deems appropriate.

(f) *Guaranteed payment to tribe.* Provide for a minimum guaranteed monthly payment to the tribe in a sum certain that has preference over the retirement of development and construction costs.

(g) *Development and construction costs.* Provide an agreed upon maximum dollar amount for the recoupment of development and construction costs.

(h) *Term limits.* Be for a term not to exceed five (5) years, except that upon the request of a tribe, the Chairman may authorize a contract term that does not exceed seven (7) years if the Chairman is satisfied that the capital investment required, and the income projections, for the particular gaming operation require the additional time. The time period shall begin running no later than the date when the gaming activities authorized by an approved management contract begin.

(i) *Compensation.* Detail the method of compensating and reimbursing the management contractor. If a management contract provides for a percentage fee, such fee shall be either:

(1) Not more than thirty (30) percent of the net revenues of the gaming operation if the Chairman determines that such percentage is reasonable considering the circumstances; or

(2) Not more than forty (40) percent of the net revenues if the Chairman is satisfied that the capital investment required and income projections for the gaming operation require the additional fee.

(j) *Termination provisions.* Provide the grounds and mechanisms for amending or terminating the contract (termination of the contract shall not require the approval of the Chairman).

(k) *Dispute provisions.* Contain a mechanism to resolve disputes between:

(1) The management contractor and customers, consistent with the procedures in a tribal ordinance;

(2) The management contractor and the tribe; and

(3) The management contractor and the gaming operation employees.

(l) *Assignments and subcontracting.* Indicate whether and to what extent contract assignments and subcontracting are permissible.

(m) *Ownership interests.* Indicate whether and to what extent changes in the ownership interest in the management contract require advance approval by the tribe.

(n) *Effective date.* State that the contract shall not be effective unless and until it is approved by the Chairman, date of signature of the parties notwithstanding.

PART 533—APPROVAL OF MANAGEMENT CONTRACTS

■ 10. The authority citation for part 533 continues to read as follows:

Authority: 25 U.S.C. 81, 2706(b)(10), 2710(d)(9), 2711.

■ 11. In § 533.1, remove paragraph (c).

■ 12. Revise § 533.2 to read as follows:

§ 533.2 Time for submitting management contracts and amendments.

A tribe or a management contractor shall submit a management contract to the Chairman for review within sixty (60) days of execution by the parties. The Chairman shall notify the parties of their right to appeal the approval or disapproval of the management contract under part 539 of this chapter.

■ 13. Revise § 533.3 to read as follows:

§ 533.3 Submission of management contract for approval.

A tribe shall include in any request for approval of a management contract under this part:

(a) A contract containing:

(1) Original signatures of an authorized official of the tribe and the management contractor;

(2) A representation that the contract as submitted to the Chairman is the entirety of the agreement among the parties; and

(b) A letter, signed by the tribal chairman, setting out the authority of an authorized tribal official to act for the tribe concerning the management contract.

(c) Copies of documents evidencing the authority under paragraph (b) of this section.

(d) A list of all persons and entities identified in §§ 537.1(a) and 537.1(c)(1) of this chapter, and either:

(1) The information required under § 537.1(b)(1) of this chapter for class II gaming contracts and § 537.1(b)(1)(i) of this chapter for class III gaming contracts; or

(2) The dates on which the information was previously submitted.

(e)(1) For new contracts and new operations, a three (3)-year business plan which sets forth the parties' goals, objectives, budgets, financial plans, and related matters; or

(2) For new contracts for existing operations, a three (3)-year business plan which sets forth the parties' goals, objectives, budgets, financial plans, and related matters, and income statements and sources and uses of funds statements for the previous three (3) years.

(f) If applicable, a justification, consistent with the provisions of § 531.1(h) of this chapter, for a term limit in excess of five (5) years, but not exceeding seven (7) years.

(g) If applicable, a justification, consistent with the provisions of § 531.1(i) of this chapter, for a fee in excess of thirty (30) percent, but not exceeding forty (40) percent.

(h) A legal description for the site on which the gaming operation to be managed is, or will be, located.

■ 14. Revise § 533.4 to read as follows:

§ 533.4 Action by the Chairman.

(a) The Chairman shall approve or disapprove a management contract, applying the standards contained in § 533.6 of this part, within 180 days of the date on which the Chairman receives a complete submission under § 533.3 of this part, unless the Chairman notifies the tribe and management contractor in writing of the need for an extension of up to ninety (90) days.

(b) A tribe may bring an action in a U.S. district court to compel action by the Chairman:

(1) After 180 days following the date on which the Chairman receives a complete submission if the Chairman does not approve or disapprove the contract under this part; or

(2) After 270 days following the Chairman's receipt of a complete submission if the Chairman has told the tribe and management contractor in writing of the need for an extension and has not approved or disapproved the contract under this part.

§ 533.5 [Removed and Reserved]

■ 15. Remove and reserve § 533.5.

■ 16. Revise § 533.6 to read as follows:

§ 533.6 Approval and disapproval.

(a) The Chairman may approve a management contract if it meets the standards of part 531 of this chapter and § 533.3 of this part. Failure to comply with the standards of part 531 of this chapter or § 533.3 may result in the Chairman's disapproval of the management contract.

(b) The Chairman shall disapprove a management contract for class II gaming if he or she determines that—

(1) Any person with a direct or indirect financial interest in, or having management responsibility for, a management contract:

(i) Is an elected member of the governing body of the tribe that is party to the management contract;

(ii) Has been convicted of any felony or any misdemeanor gaming offense;

(iii) Has knowingly and willfully provided materially false statements or

information to the Commission or to a tribe;

(iv) Has refused to respond to questions asked by the Chairman in accordance with his or her responsibilities under this part; or

(v) Is determined by the Chairman to be a person whose prior activities, criminal record, if any, or reputation, habits, and associations pose a threat to the public interest or to the effective regulation and control of gaming, or create or enhance the dangers of unsuitable, unfair, or illegal practices, methods, and activities in the conduct of gaming or the carrying on of related business and financial arrangements;

(2) The management contractor or its agents have unduly interfered with or influenced for advantage, or have tried to unduly interfere with or influence for advantage, any decision or process of tribal government relating to the gaming operation;

(3) The management contractor or its agents has deliberately or substantially failed to follow the terms of the management contract or the tribal gaming ordinance or resolution adopted and approved pursuant to this Act; or

(4) A trustee, exercising the skill and diligence to which a trustee is commonly held, would not approve the contract.

(c) The Chairman may disapprove a management contract for class III gaming if he or she determines that a person with a financial interest in, or management responsibility for, a management contract is a person whose prior activities, criminal record, if any, or reputation, habits, and associations pose a threat to the public interest or to the effective regulation and control of gaming, or create or enhance the dangers of unsuitable, unfair, or illegal practices, methods, and activities in the conduct of gaming or the carrying on of related business and financial arrangements.

■ 17. Revise § 533.7 to read as follows:

§ 533.7 Void agreements.

Management contracts and changes in persons with a financial interest in or management responsibility for a management contract, that have not been approved by the Chairman in accordance with the requirements of part 531 of this chapter and this part, are void.

PART 535—POST-APPROVAL PROCEDURES

■ 18. The authority citation for part 535 continues to read as follows:

Authority: 25 U.S.C. 81, 2706(b)(10), 2710(d)(9), 2711.

■ 19. Revise § 535.1 to read as follows:

§ 535.1 Amendments.

(a) Subject to the Chairman's approval, a tribe may enter into an amendment of a management contract for the operation of a class II or class III gaming activity.

(b) A tribe shall submit an amendment to the Chairman within thirty (30) days of its execution.

(c) A tribe shall include in any request for approval of an amendment under this part:

(1) An amendment containing original signatures of an authorized official of the tribe and the management contractor and terms that meet the applicable requirements of part 531 of this chapter;

(2) A letter, signed by the tribal chairman, setting out the authority of an authorized tribal official to act for the tribe concerning the amendment;

(3) Copies of documents evidencing the authority under paragraph (c)(2) of this section;

(4) A list of all persons and entities identified in § 537.1(a) and § 537.1(c)(1) of this chapter:

(i) If the amendment involves a change in person(s) having a direct or indirect financial interest in the management contract or having management responsibility for the management contract, a list of such person(s) and either:

(A) The information required under § 537.1(b)(1) of this chapter for class II gaming contracts or § 537.1(b)(1)(i) of this chapter for class III gaming contracts; or

(B) The dates on which the information was previously submitted;

(ii) [Reserved]

(5) If applicable, a justification, consistent with the provisions of § 531.1(h) of this chapter, for a term limit in excess of five (5) years, but not exceeding seven (7) years; and

(6) If applicable, a justification, consistent with the provisions of § 531.1(i) of this chapter, for a management fee in excess of thirty (30) percent, but not exceeding forty (40) percent.

(d)(1) The Chairman shall approve or disapprove an amendment within thirty (30) days from receipt of a complete submission if the amendment does not require a background investigation under part 537 of this chapter, unless the Chairman notifies the parties in writing of the need for an extension of up to thirty (30) days.

(2) The Chairman shall approve or disapprove an amendment as soon as practicable but no later than 180 days from receipt of a complete submission if the amendment requires a background investigation under part 537 of this chapter;

(3) A party may appeal the Chairman's approval or disapproval of an amendment under part 539 of this chapter. If the Chairman does not approve or disapprove an amendment within the timelines of paragraph (d)(1) or (d)(2) of this section, the amendment shall be deemed disapproved and a party shall have thirty (30) days to appeal the decision under part 539 of this chapter.

(e)(1) The Chairman may approve an amendment to a management contract if the amendment meets the submission requirements of paragraph (c) of this section. Failure to comply with the submission requirements of paragraph (c) of this section may result in the Chairman's disapproval of an amendment.

(2) The Chairman shall disapprove an amendment of a management contract for class II gaming if he or she determines that the conditions contained in § 533.6(b) of this chapter apply.

(3) The Chairman may disapprove an amendment of a management contract for class III gaming if he or she determines that the conditions contained in § 533.6(c) of this chapter apply.

(f) Amendments that have not been approved by the Chairman in accordance with the requirements of this part are void.

■ 20. Revise § 535.3 to read as follows:

§ 535.3 Post-approval noncompliance.

If the Chairman learns of any action or condition that violates the standards contained in parts 531, 533, 535, or 537 of this chapter, the Chairman may require modifications of, or may void, a management contract or amendment approved by the Chairman under such sections, after providing the parties an opportunity for a hearing before the Chairman and a subsequent appeal to the Commission as set forth in part 577 of this chapter. The Chairman will initiate modification or void proceedings by serving the parties, specifying the grounds for the modification or void. The parties will have thirty (30) days to request a hearing or respond with objections. Within thirty (30) days of receiving a request for a hearing, the Chairman will hold a hearing and receive oral presentations and written submissions. The Chairman will make a decision on the basis of the developed record and notify the parties of the decision and of their right to appeal.

PART 537—BACKGROUND INVESTIGATIONS FOR PERSONS OR ENTITIES WITH A FINANCIAL INTEREST IN, OR HAVING MANAGEMENT RESPONSIBILITY FOR, A MANAGEMENT CONTRACT

■ 21. The authority citation to part 537 continues to read as follows:

Authority: 25 U.S.C. 81, 2706(b)(10), 2710(d)(9), 2711.

■ 22. Revise § 537.1 to read as follows:

§ 537.1 Applications for approval.

(a) For each management contract for class II gaming, the Chairman shall conduct or cause to be conducted a background investigation of:

(1) Each person with management responsibility for a management contract;

(2) Each person who is a director of a corporation that is a party to a management contract;

(3) The ten (10) persons who have the greatest direct or indirect financial interest in a management contract;

(4) Any entity with a financial interest in a management contract (in the case of institutional investors, the Chairman may exercise discretion and reduce the scope of the information to be furnished and the background investigation to be conducted); and

(5) Any other person with a direct or indirect financial interest in a management contract otherwise designated by the Commission.

(b) For each natural person identified in paragraph (a) of this section, the management contractor shall provide to the Commission the following information:

(1) *Required information.* (i) Full name, other names used (oral or written), social security number(s), birth date, place of birth, citizenship, and gender;

(ii) A current photograph, driver's license number, and a list of all languages spoken or written;

(iii) Business and employment positions held, and business and residence addresses currently and for the previous ten (10) years; the city, state and country of residence from age eighteen (18) to the present;

(iv) The names and current addresses of at least three (3) personal references, including one personal reference who was acquainted with the person at each different residence location for the past five (5) years;

(v) Current business and residence telephone numbers;

(vi) A description of any existing and previous business relationships with Indian tribes, including ownership interests in those businesses;

(vii) A description of any existing and previous business relationships with the gaming industry generally, including ownership interests in those businesses;

(viii) The name and address of any licensing or regulatory agency with which the person has filed an application for a license or permit relating to gaming, whether or not such license or permit was granted;

(ix) For each gaming offense and for each felony for which there is an ongoing prosecution or a conviction, the name and address of the court involved, the charge, and the dates of the charge and of the disposition;

(x) For each misdemeanor conviction or ongoing misdemeanor prosecution (excluding minor traffic violations) within ten (10) years of the date of the application, the name and address of the court involved, and the dates of the prosecution and the disposition;

(xi) A complete financial statement showing all sources of income for the previous three (3) years, and assets, liabilities, and net worth as of the date of the submission; and

(xii) For each criminal charge (excluding minor traffic charges) regardless of whether or not it resulted in a conviction, if such criminal charge is within 10 years of the date of the application and is not otherwise listed pursuant to paragraphs (b)(1)(ix) or (b)(1)(x) of this section, the name and address of the court involved, the criminal charge, and the dates of the charge and the disposition.

(2) *Fingerprints.* The management contractor shall arrange with an appropriate federal, state, or tribal law enforcement authority to supply the Commission with a completed form FD–258, Applicant Fingerprint Card, (provided by the Commission), for each person for whom background information is provided under this section.

(3) *Responses to Questions.* Each person with a direct or indirect financial interest in a management contract or management responsibility for a management contract shall respond within thirty (30) days to written or oral questions propounded by the Chairman.

(4) *Privacy notice.* In compliance with the Privacy Act of 1974, each person required to submit information under this section shall sign and submit the following statement:

> Solicitation of the information in this section is authorized by 25 U.S.C. 2701 *et seq.* The purpose of the requested information is to determine the suitability of individuals with a financial interest in, or having management responsibility for, a management contract. The information will be used by the National Indian Gaming Commission members and staff and Indian tribal officials who have need for the information in the performance of their official duties. The information may be disclosed to appropriate federal, tribal, state, or foreign law enforcement and regulatory agencies in connection with a background investigation or when relevant to civil, criminal or regulatory investigations or prosecutions or investigations of activities while associated with a gaming operation. Failure to consent to the disclosures indicated in this statement will mean that the Chairman of the National Indian Gaming Commission will be unable to approve the contract in which the person has a financial interest or management responsibility.
>
> The disclosure of a person's Social Security Number (SSN) is voluntary. However, failure to supply a SSN may result in errors in processing the information provided.

(5) Notice regarding false statements. Each person required to submit information under this section shall sign and submit the following statement:

> A false statement knowingly and willfully provided in any of the information pursuant to this section may be grounds for not approving the contract in which I have a financial interest or management responsibility, or for disapproving or voiding such contract after it is approved by the Chairman of the National Indian Gaming Commission. Also, I may be punished by fine or imprisonment (U.S. Code, title 18, section 1001).

(c) For each entity identified in paragraph (a)(4) of this section, the management contractor shall provide to the Commission the following information:

(1) List of individuals. (i) Each of the ten (10) largest beneficiaries and the trustees when the entity is a trust;

(ii) Each of the ten (10) largest partners when the entity is a partnership;

(iii) Each person who is a director or who is one of the ten (10) largest holders of the issued and outstanding stock alone or in combination with another stockholder who is a spouse, parent, child or sibling when the entity is a corporation; and

(iv) For any other type of entity, the ten (10) largest owners of that entity alone or in combination with any other owner who is a spouse, parent, child or sibling and any person with management responsibility for that entity.

(2) Required information. (i) The information required in paragraph (b)(1)(i) of this section for each individual identified in paragraph (c)(1) of this section;

(ii) Copies of documents establishing the existence of the entity, such as the partnership agreement, the trust

agreement, or the articles of incorporation;

(iii) Copies of documents designating the person who is charged with acting on behalf of the entity;

(iv) Copies of bylaws or other documents that provide the day-to-day operating rules for the organization;

(v) A description of any existing and previous business relationships with Indian tribes, including ownership interests in those businesses;

(vi) A description of any existing and previous business relationships with the gaming industry generally, including ownership interest in those businesses;

(vii) The name and address of any licensing or regulatory agency with which the entity has filed an application for a license or permit relating to gaming, whether or not such license or permit was granted;

(viii) For each gaming offense and for each felony for which there is an ongoing prosecution or a conviction, the name and address of the court involved, the charge, and the dates of the charge and disposition;

(ix) For each misdemeanor conviction or ongoing misdemeanor prosecution within ten (10) years of the date of the application, the name and address of the court involved, and the dates of the prosecution and disposition;

(x) Complete financial statements for the previous three (3) fiscal years; and

(xi) For each criminal charge (excluding minor traffic charges) whether or not there is a conviction, if such criminal charge is within 10 years of the date of the application and is not otherwise listed pursuant to paragraph (c)(1)(viii) or (c)(1)(ix) of this section, the criminal charge, the name and address of the court involved and the dates of the charge and disposition.

(3) Responses to questions. Each entity with a direct or indirect financial interest in a management contract shall respond within thirty (30) days to written or oral questions propounded by the Chairman.

(4) Notice regarding false statements. Each entity required to submit information under this section shall sign and submit the following statement:

A false statement knowingly and willfully provided in any of the information pursuant to this section may be grounds for not approving the contract in which we have a financial interest, or for disapproving or voiding such contract after it is approved by the Chairman of the National Indian Gaming Commission. Also, we may be punished by fine or imprisonment (U.S. Code, title 18, section 1001).

■ 23. Revise § 537.3 to read as follows:

§ 537.3 Fees for background investigations.

(a) A management contractor shall pay to the Commission or the contractor(s) designated by the Commission the cost of all background investigations conducted under this part.

(b) The management contractor shall post a bond, letter of credit, or deposit with the Commission to cover the cost of the background investigations as follows:

(1) Management contractor (party to the contract)—$25,000

(2) Each individual and entity with a financial interest in the contract—$10,000

(c) The management contractor shall be billed for the costs of the investigation as it proceeds; the investigation shall be suspended if the unpaid costs exceed the amount of the bond, letter of credit, or deposit available.

(1) An investigation will be terminated if any bills remain unpaid for more than thirty (30) days.

(2) A terminated investigation will preclude the Chairman from making the necessary determinations and result in a disapproval of a management contract.

(d) The bond, letter of credit or deposit will be returned to the management contractor when all bills have been paid and the investigations have been completed or terminated.

PART 539—APPEALS

■ 24. The authority citation for part 539 continues to read as follows:

Authority: 25 U.S.C. 81, 2706(b)(10), 2710(d)(9), 2711.

■ 25. Revise § 539.1 to read as follows:

§ 539.1 Scope of this part.

This part applies to appeals from the Chairman's decision to approve or disapprove a management contract or amendment under this subchapter, except that appeals from the Chairman's decision to require modifications of or to void a management contract or amendment subsequent to his or her initial approval are addressed in § 535.3 and part 577 of this chapter.

■ 26. Revise § 539.2 to read as follows:

§ 539.2 Appeals.

A party may appeal the Chairman's approval or disapproval of a management contract or amendment under parts 533 or 535 of this chapter to the Commission. Such an appeal shall be filed with the Commission within thirty (30) days after the Chairman serves his or her determination pursuant to part 519 of this chapter. Failure to file an appeal within the time provided by this section shall result in a waiver of the opportunity for an appeal. At the time of filing, an appeal under this section shall specify the reasons why the party believes the Chairman's determination to be erroneous, and shall include supporting documentation, if any. Within thirty (30) days after receipt of the appeal, the Commission shall render a decision unless the appellant elects to provide the Commission additional time, not to exceed an additional thirty (30) days, to render a decision. In the absence of a decision within the time provided, the Chairman's decision shall constitute a final decision of the Commission.

PART 556—BACKGROUND INVESTIGATIONS FOR PRIMARY MANAGEMENT OFFICIALS AND KEY EMPLOYEES

■ 27. The authority citation for part 556 continues to read as follows:

Authority: 25 U.S.C. 2706, 2710, 2712.

■ 28. Revise § 556.2 to read as follows:

§ 556.2 Privacy notice.

(a) A tribe shall place the following notice on the application form for a key employee or a primary management official before that form is filled out by an applicant:

In compliance with the Privacy Act of 1974, the following information is provided: Solicitation of the information on this form is authorized by 25 U.S.C. 2701 *et seq*. The purpose of the requested information is to determine the eligibility of individuals to be granted a gaming license. The information will be used by the Tribal gaming regulatory authorities and by the National Indian Gaming Commission members and staff who have need for the information in the performance of their official duties. The information may be disclosed to appropriate Federal, Tribal, State, local, or foreign law enforcement and regulatory agencies when relevant to civil, criminal or regulatory investigations or prosecutions or when pursuant to a requirement by a tribe or the National Indian Gaming Commission in connection with the issuance, denial, or revocation of a gaming license, or investigations of activities while associated with a tribe or a gaming operation. Failure to consent to the disclosures indicated in this notice will result in a tribe's being unable to license you for a primary management official or key employee position.

The disclosure of your Social Security Number (SSN) is voluntary. However, failure to supply a SSN may result in errors in processing your application.

(b) A tribe shall notify in writing existing key employees and primary

management officials that they shall either:

(1) Complete a new application form that contains a Privacy Act notice; or

(2) Sign a statement that contains the Privacy Act notice and consent to the routine uses described in that notice.

(c) All tribal gaming ordinances and ordinance amendments that have been approved by the Chairman prior to the effective date of this section and that reference this notice do not need to be amended to comply with this section. All future ordinance submissions, however, must comply.

(d) All license application forms used 180 days after the effective date of this section shall contain notices in compliance with this section.

■ 29. Revise § 556.3 to read as follows:

§ 556.3 Notice regarding false statements.

(a) A tribe shall place the following notice on the application form for a key employee or a primary management official before that form is filled out by an applicant:

A false statement on any part of your license application may be grounds for denying a license or the suspension or revocation of a license. Also, you may be punished by fine or imprisonment (U.S. Code, title 18, section 1001).

(b) A tribe shall notify in writing existing key employees and primary management officials that they shall either:

(1) Complete a new application form that contains a notice regarding false statements; or

(2) Sign a statement that contains the notice regarding false statements.

(c) All tribal gaming ordinances and ordinance amendments that have been approved by the Chairman prior to the effective date of this section and that reference this notice do not need to be amended to comply with this section. All future ordinance submissions, however, must comply.

(d) All license application forms used 180 days after the effective date of this section shall contain notices in compliance with this section.

PART 558—GAMING LICENSES FOR KEY EMPLOYEES AND PRIMARY MANAGEMENT OFFICIALS

■ 30. The authority citation for part 558 continues to read as follows:

Authority: 25 U.S.C. 2706, 2710, 2712.

■ 31. Revise § 558.2 to read as follows:

§ 558.2 Eligibility determination for granting a gaming license.

(a) An authorized tribal official shall review a person's prior activities, criminal record, if any, and reputation, habits and associations to make a finding concerning the eligibility of a key employee or a primary management official for granting of a gaming license. If the authorized tribal official, in applying the standards adopted in a tribal ordinance, determines that licensing of the person poses a threat to the public interest or to the effective regulation of gaming, or creates or enhances the dangers of unsuitable, unfair, or illegal practices and methods and activities in the conduct of gaming, an authorizing tribal official shall not license that person in a key employee or primary management official position.

(b) All tribal gaming ordinances and ordinance amendments that have been approved by the Chairman prior to the effective date of this section and that reference this section do not need to be amended to comply with this section. All future ordinance submissions, however, must comply.

PART 571—MONITORING AND INVESTIGATIONS

■ 32. The authority citation for part 571 continues to read as follows:

Authority: 25 U.S.C. 2706(b), 2710(b)(2)(C), 2715, 2716.

■ 33. Revise § 571.12 to read as follows:

§ 571.12 Audit standards.

(a) Each tribe shall prepare comparative financial statements covering all financial activities of each class II and class III gaming operation on the tribe's Indian lands for each fiscal year.

(b) A tribe shall engage an independent certified public accountant to provide an annual audit of the financial statements of each class II and class III gaming operation on the tribe's Indian lands for each fiscal year. The independent certified public accountant must be licensed by a state board of accountancy. Financial statements prepared by the certified public accountant shall conform to generally accepted accounting principles and the annual audit shall conform to generally accepted auditing standards.

(c) If a gaming operation has gross gaming revenues of less than $2,000,000 during the prior fiscal year, the annual audit requirement of paragraph (b) of this section is satisfied if:

(1) The independent certified public accountant completes a review of the financial statements conforming to the statements on standards for accounting and review services of the gaming operation; and

(2) Unless waived in writing by the Commission, the gaming operation's financial statements for the three previous years were sent to the Commission in accordance with § 571.13.

(d) If a gaming operation has multiple gaming places, facilities or locations on the tribe's Indian lands, the annual audit requirement of paragraph (b) of this section is satisfied if:

(1) The tribe chooses to consolidate the financial statements of the gaming places, facilities or locations;

(2) The independent certified public accountant completes an audit conforming to generally accepted auditing standards of the consolidated financial statements;

(3) The consolidated financial statements include consolidating schedules for each gaming place, facility, or location;

(4) Unless waived in writing by the Commission, the gaming operation's financial statements for the three previous years, whether or not consolidated, were sent to the Commission in accordance with § 571.13; and

(5) The independent certified public accountant expresses an opinion on the consolidated financial statement as a whole and subjects the accompanying financial information to the auditing procedures applicable to the audit of consolidated financial statements.

(e) If there are multiple gaming operations on a tribe's Indian lands and each operation has gross gaming revenues of less than $2,000,000 during the prior fiscal year, the annual audit requirement of paragraph (b) of this section is satisfied if:

(1) The tribe chooses to consolidate the financial statements of the gaming operations;

(2) The consolidated financial statements include consolidating schedules for each operation;

(3) The independent certified public accountant completes a review of the consolidated schedules conforming to the statements on standards for accounting and review services for each gaming facility or location;

(4) Unless waived in writing by the Commission, the gaming operations' financial statements for the three previous years, whether or not consolidated, were sent to the Commission in accordance with § 571.13; and

(5) The independent certified public accountant expresses an opinion on the consolidated financial statements as a whole and subjects the accompanying financial information to the auditing procedures applicable to the audit of consolidated financial statements.

■ 34. Revise § 571.13 to read as follows:

§ 571.13 Copies of audit reports.

(a) Each tribe shall prepare and submit to the Commission two paper copies or one electronic copy of the financial statements and audits required by § 571.12, together with management letter(s), and other documented auditor communications and/or reports as a result of the audit setting forth the results of each fiscal year. The submission must be sent to the Commission within 120 days after the end of each fiscal year of the gaming operation.

(b) If a gaming operation changes its fiscal year, the tribe shall prepare and submit to the Commission two paper copies or one electronic copy of the financial statements, reports, and audits required by § 571.12, together with management letter(s), setting forth the results of the stub period from the end of the previous fiscal year to the beginning of the new fiscal year. The submission must be sent to the Commission within 120 days after the end of the stub period, or a tribe may incorporate the financial results of the stub period in the financial statements for the new business year.

(c) When gaming ceases to operate and the tribal gaming regulatory authority has terminated the facility license required by § 559.6, the tribe shall prepare and submit to the Commission two paper copies or one electronic copy of the financial statements, reports, and audits required by § 571.12, together with management letter(s), setting forth the results covering the period since the period covered by the previous financial statements. The submission must be sent to the Commission within 120 days after the cessation of gaming activity or upon completion of the tribe's fiscal year.

■ 35. Revise § 571.14 to read as follows:

§ 571.14 Relationship of financial statements to fee assessment reports.

A tribe shall reconcile its Commission fee assessment reports, submitted under 25 CFR part 514, with its audited or reviewed financial statements for each location and make available such reconciliation upon request by the Commission's authorized representative.

PART 573—ENFORCEMENT

■ 36. The authority citation for part 573 continues to read as follows:

Authority: 25 U.S.C. 2703 (4), 2705(a)(1), 2706, 2713, 2715, 2719.

■ 37. Add new paragraph (a)(13) to § 573.6 to read as follows:

§ 573.6 Order of temporary closure.

(a) * * *

(13) A gaming facility operates on Indian lands not eligible for gaming under the Indian Gaming Regulatory Act.

* * * * *

Philip N. Hogen,

Chairman.

Norman H. DesRosiers,

Vice Chairman.

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POSTAL REGULATORY COMMISSION

39 CFR Part 3020

[Docket Nos. MC2009–27 and CP2009–37; Order No. 231]

Priority Mail Contract

AGENCY: Postal Regulatory Commission.

ACTION: Final rule.

SUMMARY: The Commission is adding Priority Mail Contract 11 to the Competitive Product List. This action is consistent with changes in a recent law governing postal operations. Republication of the lists of market dominant and competitive products is also consistent with new requirements in the law.

DATES: Effective July 27, 2009 and is applicable beginning July 1, 2009.

FOR FURTHER INFORMATION CONTACT: Stephen L. Sharfman, General Counsel, 202–789–6824 or *stephen.sharfman@prc.gov.*

SUPPLEMENTARY INFORMATION: *Regulatory History,* 74 FR 30179 (June 24, 2009).

I. Background

The Postal Service seeks to add a new product identified as Priority Mail Contract 11 to the Competitive Product List. For the reasons discussed below, the Commission approves the Request.

On June 11, 2009, the Postal Service filed a notice, pursuant to 39 U.S.C. 3632(b)(3) and 39 CFR 3015.5, announcing that it has entered into an additional contract (Priority Mail Contract 11), which it attempts to classify within the previously proposed Priority Mail Contract Group product.[1] In support, the Postal Service filed the proposed contract and referenced Governors' Decision 09–6 filed in Docket No. MC2009–25. *Id.* at 1. The Notice has been assigned Docket No. CP2009–37.

In response to Order No. 222,[2] and in accordance with 39 U.S.C. 3642 and 39 CFR 3020 subpart B, the Postal Service filed a formal request to add Priority Mail Contract 11 to the Competitive Product List as a separate product.[3] The Postal Service asserts that the Priority Mail Contract 11 product is a competitive product ''not of general applicability'' within the meaning of 39 U.S.C. 3632(b)(3). This Request has been assigned Docket No. MC2009–27.

In support of its Notice and Request, the Postal Service filed the following materials: (1) A redacted version of the contract which, among other things, provides that the contract will expire 3 years from the effective date, which is proposed to be the day that the Commission issues all regulatory approvals;[4] (2) requested changes in the Mail Classification Schedule product list;[5] (3) a Statement of Supporting Justification as required by 39 CFR 3020.32;[6] and (4) certification of compliance with 39 U.S.C. 3633(a).[7]

In the Statement of Supporting Justification, Mary Prince Anderson, Acting Manager, Sales and Communications, Expedited Shipping, asserts that the service to be provided under the contract will cover its attributable costs, make a positive contribution to coverage of institutional costs, and will increase contribution toward the requisite 5.5 percent of the Postal Service's total institutional costs. Request, Attachment B, at 1. W. Ashley Lyons, Manager, Corporate Financial Planning, Finance Department, certifies that the contract complies with 39 U.S.C. 3633(a). Notice, Attachment B.

The Postal Service filed much of the supporting materials, including the unredacted contract, under seal. In its Notice, the Postal Service maintains that the contract and related financial information, including the customer's name and the accompanying analyses that provide prices, terms, conditions, and financial projections, should remain confidential. Notice at 2–3.

[1] Notice of Establishment of Rates and Class Not of General Applicability (Priority Mail Contract 11), June 11, 2009 (Notice).

[2] PRC Order No. 222, Notice and Order Concerning Filing of Priority Mail Contract 11 Negotiated Service Agreement, June 17, 2009 (Order No. 222).

[3] Request of the United States Postal Service to Add Priority Mail Contract 11 to Competitive Product List, June 23, 2009 (Request).

[4] Attachment A to the Notice.

[5] Attachment A to the Request.

[6] Attachment B to the Request.

[7] Attachment B to the Notice.

In Order No. 222, the Commission gave notice of the two dockets, requested supplemental information, appointed a public representative, and provided the public with an opportunity to comment.[8] On June 22, 2009, Chairman's Information Request No. 1 was filed.[9] On June 23, 2009, the Postal Service filed the supplemental information requested.[10] The Postal Service filed its response to the Chairman's Information Request on June 26, 2009.[11]

II. Comments

Comments were filed by the Public Representative.[12] No comments were submitted by other interested parties. The Public Representative states that the Postal Service's filing complies with applicable Commission rules of practice and procedure, and concludes that the Priority Mail Contract 11 agreement comports with the requirements of title 39 and is appropriately classified as competitive. *Id.* at 3.

The Public Representative believes that the Postal Service has provided adequate justification for maintaining confidentiality in this case. *Id.* at 2–3. He indicates that the contractual provisions are mutually beneficial to the parties and the general public. *Id.* at 4.

III. Commission Analysis

The Commission has reviewed the Notice, the Request, the contract, the financial analysis provided under seal that accompanies it, the Postal Service's responses to Chairman's Information Request No. 1, the Postal Service's response to the Commission's request for supplemental information, and the comments filed by the Public Representative.

Statutory requirements. The Commission's statutory responsibilities in this instance entail assigning Priority Mail Contract 11 to either the Market Dominant Product List or to the Competitive Product List. 39 U.S.C. 3642. As part of this responsibility, the Commission also reviews the proposal for compliance with the Postal Accountability and Enhancement Act (PAEA) requirements. This includes, for proposed competitive products, a review of the provisions applicable to rates for competitive products. 39 U.S.C. 3633.

Product list assignment. In determining whether to assign Priority Mail Contract 11 as a product to the Market Dominant Product List or the Competitive Product List, the Commission must consider whether

> the Postal Service exercises sufficient market power that it can effectively set the price of such product substantially above costs, raise prices significantly, decrease quality, or decrease output, without risk of losing a significant level of business to other firms offering similar products.

3642(b)(1). If so, the product will be categorized as market dominant. The competitive category of products shall consist of all other products.

The Commission is further required to consider the availability and nature of enterprises in the private sector engaged in the delivery of the product, the views of those who use the product, and the likely impact on small business concerns. 39 U.S.C. 3642(b)(3).

The Postal Service asserts that its bargaining position is constrained by the existence of other shippers who can provide similar services, thus precluding it from taking unilateral action to increase prices without the risk of losing volume to private companies. Request, Attachment B, para. (d). The Postal Service also contends that it may not decrease quality or output without risking the loss of business to competitors that offer similar expedited delivery services. *Id.* It further states that the contract partner supports the addition of the contract to the Competitive Product List to effectuate the negotiated contractual terms. *Id.* at para. (g). Finally, the Postal Service states that the market for expedited delivery services is highly competitive and requires a substantial infrastructure to support a national network. It indicates that large carriers serve this market. Accordingly, the Postal Service states that it is unaware of any small business concerns that could offer comparable service for this customer. *Id.* at para. (h).

No commenter opposes the proposed classification of Priority Mail Contract 11 as competitive. Having considered the statutory requirements and the support offered by the Postal Service, the Commission finds that Priority Mail Contract 11 is appropriately classified as a competitive product and should be added to the Competitive Product List.

Cost considerations. The Postal Service presents a financial analysis showing that Priority Mail Contract 11 results in cost savings while ensuring that the contract covers its attributable costs, does not result in subsidization of competitive products by market dominant products, and increases contribution from competitive products. Order No. 222 and Chairman's Information Request No. 1 sought additional support and justification for particular cost saving elements. The Postal Service's responses did not persuade the Commission that certain cost savings elements were appropriate here.

Accordingly, the Commission's analysis of the proposed contract is based on alternative cost estimates of certain mail functions. The Commission employed this analysis to determine whether changed cost inputs would materially affect the contract's financial analysis.[13] The Commission concludes that the changed inputs do not have a material effect on the underlying financial analysis of the contract.

Based on the data submitted and the Commission's alternative analysis, the Commission finds that Priority Mail Contract 11 should cover its attributable costs (39 U.S.C. 3633(a)(2)), should not lead to the subsidization of competitive products by market dominant products (39 U.S.C. 3633(a)(1)), and should have a positive effect on competitive products' contribution to institutional costs (39 U.S.C. 3633(a)(3)). Thus, an initial review of proposed Priority Mail Contract 11 indicates that it comports with the provisions applicable to rates for competitive products.

The electronic files submitted in support of the Notice did not include all supporting data. Future requests must provide all electronic files showing calculations in support of the financial models associated with the request. A failure to provide such information may delay resolution of requests in the future.

Other considerations. The Postal Service shall promptly notify the Commission of the scheduled termination date of the agreement. If the agreement terminates earlier than anticipated, the Postal Service shall inform the Commission prior to the new termination date. The Commission will then remove the product from the Mail Classification Schedule at the earliest possible opportunity.

In conclusion, the Commission approves Priority Mail Contract 11 as a new product. The revision to the Competitive Product List is shown

[8] Order No. 222 at 1–4.

[9] Chairman's Information Request No. 1 and Notice of Filing of Question Under Seal, June 22, 2009. A portion of the Chairman's Information Request was filed under seal.

[10] Response of the United States Postal Service to Commission's Request for Supplemental Information in Order No. 222, June 23, 2009.

[11] Response to Chairman's Information Request No. 1, Question 2 and Notice of Filing Responses to Questions 1 and 3 Under Seal, June 26, 2009.

[12] Public Representative Comments in Response to United States Postal Service Notice of Establishment of Rates and Class Not of General Applicability (Priority Mail Contract 11), June 26, 2009 (Public Representative Comments).

[13] The Commission's analysis is set forth in Library Reference PRC–CP2009–37–NP–LR–1, which, because it contains confidential information, is being filed under seal.

below the signature of this order and is effective upon issuance of this order.

IV. Ordering Paragraphs

It is ordered:

1. Priority Mail Contract 11 (MC2009–27 and CP2009–37) is added to the Competitive Product List as a new product under Negotiated Service Agreements, Domestic.

2. The Postal Service shall notify the Commission of the scheduled termination date and update the Commission if the termination date occurs prior to that date, as discussed in this order.

3. The Secretary shall arrange for the publication of this order in the **Federal Register**.

List of Subjects in 39 CFR Part 3020

Administrative practice and procedure; Postal Service.

Issued: July 1, 2009.

By the Commission.

Judith M. Grady,

Acting Secretary.

■ For the reasons stated in the preamble, under the authority at 39 U.S.C. 503, the Postal Service Commission amends 39 CFR part 3020 as follows:

PART 3020—PRODUCT LISTS

■ 1. The authority citation for part 3020 continues to read as follows:

Authority: 39 U.S.C. 503; 3622; 3631; 3642; 3682.

■ 2. Revise Appendix A to Subpart A of Part 3020—Mail Classification to read as follows:

Appendix A to Subpart A of Part 3020—Mail Classification Schedule

Part A—Market Dominant Products
1000 Market Dominant Product List
First-Class Mail
  Single-Piece Letters/Postcards
  Bulk Letters/Postcards
  Flats
  Parcels
  Outbound Single-Piece First-Class Mail International
  Inbound Single-Piece First-Class Mail International
Standard Mail (Regular and Nonprofit)
  High Density and Saturation Letters
  High Density and Saturation Flats/Parcels
  Carrier Route
  Letters
  Flats
  Not Flat-Machinables (NFMs)/Parcels
Periodicals
  Within County Periodicals
  Outside County Periodicals
Package Services
  Single-Piece Parcel Post
  Inbound Surface Parcel Post (at UPU rates)
  Bound Printed Matter Flats
  Bound Printed Matter Parcels
  Media Mail/Library Mail
Special Services
  Ancillary Services
  International Ancillary Services
  Address List Services
  Caller Service
  Change-of-Address Credit Card Authentication
  Confirm
  International Reply Coupon Service
  International Business Reply Mail Service
  Money Orders
  Post Office Box Service
Negotiated Service Agreements
  HSBC North America Holdings Inc. Negotiated Service Agreement
  Bookspan Negotiated Service Agreement
  Bank of America Corporation Negotiated Service Agreement
  The Bradford Group Negotiated Service Agreement
  Inbound International
  Canada Post—United States Postal Service Contractual Bilateral Agreement for Inbound Market Dominant Services
Market Dominant Product Descriptions
First-Class Mail
[Reserved for Class Description]
  Single-Piece Letters/Postcards
  [Reserved for Product Description]
  Bulk Letters/Postcards
  [Reserved for Product Description]
  Flats
  [Reserved for Product Description]
  Parcels
  [Reserved for Product Description]
  Outbound Single-Piece First-Class Mail International
  [Reserved for Product Description]
  Inbound Single-Piece First-Class Mail International
  [Reserved for Product Description]
Standard Mail (Regular and Nonprofit)
[Reserved for Class Description]
  High Density and Saturation Letters
  [Reserved for Product Description]
  High Density and Saturation Flats/Parcels
  [Reserved for Product Description]
  Carrier Route
  [Reserved for Product Description]
  Letters
  [Reserved for Product Description]
  Flats
  [Reserved for Product Description]
  Not Flat-Machinables (NFMs)/Parcels
  [Reserved for Product Description]
Periodicals
[Reserved for Class Description]
  Within County Periodicals
  [Reserved for Product Description]
  Outside County Periodicals
  [Reserved for Product Description]
Package Services
[Reserved for Class Description]
  Single-Piece Parcel Post
  [Reserved for Product Description]
  Inbound Surface Parcel Post (at UPU rates)
  [Reserved for Product Description]
  Bound Printed Matter Flats
  [Reserved for Product Description]
  Bound Printed Matter Parcels
  [Reserved for Product Description]
  Media Mail/Library Mail
  [Reserved for Product Description]
Special Services
[Reserved for Class Description]
  Ancillary Services
  [Reserved for Product Description]
  Address Correction Service
  [Reserved for Product Description]
  Applications and Mailing Permits
  [Reserved for Product Description]
  Business Reply Mail
  [Reserved for Product Description]
  Bulk Parcel Return Service
  [Reserved for Product Description]
  Certified Mail
  [Reserved for Product Description]
  Certificate of Mailing
  [Reserved for Product Description]
  Collect on Delivery
  [Reserved for Product Description]
  Delivery Confirmation
  [Reserved for Product Description]
  Insurance
  [Reserved for Product Description]
  Merchandise Return Service
  [Reserved for Product Description]
  Parcel Airlift (PAL)
  [Reserved for Product Description]
  Registered Mail
  [Reserved for Product Description]
  Return Receipt
  [Reserved for Product Description]
  Return Receipt for Merchandise
  [Reserved for Product Description]
  Restricted Delivery
  [Reserved for Product Description]
  Shipper-Paid Forwarding
  [Reserved for Product Description]
  Signature Confirmation
  [Reserved for Product Description]
  Special Handling
  [Reserved for Product Description]
  Stamped Envelopes
  [Reserved for Product Description]
  Stamped Cards
  [Reserved for Product Description]
  Premium Stamped Stationery
  [Reserved for Product Description]
  Premium Stamped Cards
  [Reserved for Product Description]
  International Ancillary Services
  [Reserved for Product Description]
  International Certificate of Mailing
  [Reserved for Product Description]
  International Registered Mail
  [Reserved for Product Description]
  International Return Receipt
  [Reserved for Product Description]
  International Restricted Delivery
  [Reserved for Product Description]
  Address List Services
  [Reserved for Product Description]
  Caller Service
  [Reserved for Product Description]
  Change-of-Address Credit Card Authentication
  [Reserved for Product Description]
  Confirm
  [Reserved for Product Description]
  International Reply Coupon Service
  [Reserved for Product Description]
  International Business Reply Mail Service
  [Reserved for Product Description]
  Money Orders
  [Reserved for Product Description]
  Post Office Box Service
  [Reserved for Product Description]
Negotiated Service Agreements
[Reserved for Class Description]
  HSBC North America Holdings Inc. Negotiated Service Agreement

[FR Doc. E9–17842 Filed 7–24–09; 8:45 am]

BILLING CODE 7710–FW–P

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 300

[EPA–HQ–SFUND–2009–0501; FRL–8934–2]

National Oil and Hazardous Substance; Pollution Contingency Plan; National Priorities List

AGENCY: Environmental Protection Agency.

ACTION: Direct Final Notice of Deletion of the Southern California Edison, Visalia Pole Yard Superfund Site from the National Priorities List.

SUMMARY: The Environmental Protection Agency (EPA) Region IX, is publishing a Direct Final Notice of Deletion for the Southern California Edison (SCE), Visalia Pole Yard Superfund Site (Site) located in northeastern Visalia, Tulare County, California, from the National Priorities List (NPL). The NPL, promulgated pursuant to Section 105 of the Comprehensive Environmental Response, Compensation, and Liability Act (CERCLA) of 1980, as amended, is an appendix of the National Oil and Hazardous Substances Pollution Contingency Plan (NCP). This direct final deletion is being published by EPA with the concurrence of the State of California, through the Department of Toxic Substance Control (DTSC), because EPA has determined that all appropriate response actions under CERCLA, other than operation, maintenance, and five-year reviews, have been completed. However, this deletion does not preclude future actions under Superfund.

DATES: This direct final deletion is effective September 25, 2009 unless EPA receives adverse comments by August 26, 2009. If adverse comment(s) are received, EPA will publish a timely withdrawal of the Direct Final Deletion in the **Federal Register** informing the public that the deletion will not take effect.

ADDRESSES: Submit your comments, identified by Docket ID no. EPA–HQ–SFUND–2009–0501 by one of the following methods:

• *http://www.regulations.gov*. Follow online instructions for submitting comments.
• *E-mail: lane.jackie@epa.gov.*
• *Fax:* (415) 947–3528.
• *Mail:* Jackie Lane, Community Involvement Coordinator, U.S. EPA Region IX (SFD 6–3), 75 Hawthorne Street, San Francisco, California 94105.
• *Phone:* (415) 972–3236.
• *Hand delivery:* U.S. EPA Region IX (SFD 6–3), 75 Hawthorne Street, San Francisco, California 94105. Deliveries are only accepted during regular office days and hours of operation (Monday through Friday, 8 a.m. to 5 p.m.). Special arrangements will need to be made with EPA staff for deliveries of boxed information.

Instructions: Direct your comments to Docket ID no. EPA–HQ–SFUND–2009–0501 EPA's policy is that all comments received will be included in the public docket without change and may be made available online at *http://www.regulations.gov*, including any personal information provided, unless the comment includes information claimed to be Confidential Business Information (CBI) or other information whose disclosure is restricted by statute. Do not submit information that you consider to be CBI, or otherwise protected, through *http://www.regulations.gov* or e-mail. The *http://www.regulations.gov* Web site is an ''anonymous access'' system, which means that EPA will not know your identity or contact information unless it is provided in the body of your comment. If you send an e-mail comment directly to EPA, without going through *http://www.regulations.gov*, your e-mail address will be automatically captured and included as part of the publicly available docket on the Internet. EPA recommends that all submittals include your name and other contact information (*i.e.,* e-mail and/or physical address and phone number). Please note that electronic file submittals should be free of any physical defects and computer viruses and avoid the use of special characters and any form of encryption. If technical difficulties prevent EPA from reading your comment and cannot contact you for clarification, EPA may not be able to consider your comment.

Docket: All documents in the docket are listed in the *http://www.regulations.gov* index; however, some information is not publicly available (*e.g.,* CBI or other information restricted by disclosure statute). Certain other materials, such as copyrighted materials, will be publicly available only in hard copy. All other publicly available docket materials are available either electronically *http://www.regulations.gov* or hard copy at the Site Information repositories below:

U.S. EPA Superfund Records Center, 95 Hawthorne Street, San Francisco, California 94105–3901, (415) 536–2000.

Tulare County Public Library, 200 West Oak Street, Visalia, CA 93291, (818) 952–0603.

FOR FURTHER INFORMATION CONTACT: Charnjit Bhullar, Remedial Project Manager, U.S. EPA Region IX (SFD 7–3), 75 Hawthorne Street, San Francisco, California 94105, (415) 972–3960.

SUPPLEMENTARY INFORMATION:

Table of Contents

I. Introduction

EPA Region IX is publishing this Direct Final Notice of Deletion of the Southern California Edison, Visalia Pole Yard Superfund Site (EPA ID No. CAD980816466), hereinafter VPY or Site, from the National Priorities List (NPL). The NPL constitutes Appendix B of 40 CFR part 300, which is the Oil and Hazardous Substances Pollution Contingency Plan (NCP), which EPA promulgated pursuant to section 105 of the Comprehensive Environmental Response, Compensation and Liability Act (CERCLA) of 1980, as amended. EPA maintains the NPL as the list of sites that appear to present a significant risk to public health, welfare, or the environment. Sites on the NPL may be the subject of remedial actions financed by the Hazardous Substance Superfund (Fund). As described in 300.425(e)(3) of the NCP, sites deleted from the NPL remain eligible for Fund-financed remedial actions if conditions at a deleted site or new information warrant such action.

Because EPA considers this action to be noncontroversial and routine, this action will be effective September 25, 2009 unless EPA receives adverse comments by August 26, 2009. Along with this direct final Notice of Deletion, EPA is co-publishing a Notice of Intent to Delete in the ''Proposed Rules'' section of the **Federal Register**. If adverse comments are received within the 30-day public comment period on this deletion action, EPA will publish a timely withdrawal of this direct final Notice of Deletion before the effective date of the deletion, and the deletion will not take effect. EPA will, as appropriate, prepare a response to comments and continue with the deletion process on the basis of the Notice of Intent to Delete and the comments already received. There will be no additional opportunity to comment.

Section II of this document explains the criteria for deleting sites from the NPL; Section III discusses the procedures that EPA is using for this action; Section IV discusses how the Southern California Edison, Visalia Pole Yard Superfund Site meets the NPL deletion criteria; and Section V discusses EPA's action to delete the Site from the NPL.

II. NPL Deletion Criteria

The NCP establishes the criteria that EPA uses to delete sites from the NPL. In accordance with 40 CFR 300.425(e), sites may be deleted from the NPL where no further response is appropriate. In making such a determination pursuant to 40 CFR 300.425(e), EPA will consider, in consultation with the state, whether any of the following criteria have been met:

(1) Responsible parties or other parties have implemented all appropriate response actions required;

(2) All appropriate response under CERCLA has been implemented, and no further response action by responsible parties is appropriate; or

(3) The remedial investigation has shown that the release poses no significant threat to public health or the environment and, therefore, taking of remedial measures is not appropriate.

Pursuant to CERCLA section 121(c) and the NCP, EPA conducts five-year reviews to ensure the continued protectiveness of remedial actions where hazardous substances, pollutants, or contaminants remain at a site above levels that allow for unlimited use and unrestricted exposure. EPA conducts such five-year reviews even if a site is deleted from the NPL. EPA may initiate further action to ensure continued protectiveness at a deleted site if new information becomes available that indicates it is appropriate. Whenever there is a significant release from a site deleted from the NPL, the deleted site may be restored to the NPL without application of the hazard ranking system.

III. Deletion Procedures

The following procedures were followed for deletion of this Site:

(1) The EPA consulted with the State of California's Department of Toxic Substances Control (DTSC) prior to developing this Direct Final Notice of Deletion and Notice of Intent to Delete being co-published in the ''Proposed Rules'' section of the **Federal Register**.

(2) EPA provided DTSC 30 working days for its review and comment of this Notice and the Notice of Intent to Delete and, following its review, DTSC concurs with the deletion of the Site from the NPL.

(3) Concurrently with the publication of this Direct Final Notice of Deletion, a notice of availability of the parallel Notice of Intent to Delete is being published in a major local newspaper, the Visalia Times-Delta. The newspaper notice announces the 30-day public comment period concerning the Notice of Intent to Delete the Site from the NPL.

(4) The EPA has placed copies of supporting documents for the proposed site deletion in the Deletion Docket and made these documents available for public inspection and copying at the Site Information Repositories identified above.

(5) If adverse comments are received within the 30-day public comment period on this deletion action, EPA will publish a timely notice of withdrawal of this Direct Final Notice of Deletion before its effective date and it will not take effect; otherwise, EPA will prepare a response to comments and continue with the deletion process on the basis of the Notice of Intent to Delete and the comments it has already received.

Deletion of a site from the NPL does not itself create, alter, or revoke any individual's rights or obligations. Deletion of a site from the NPL does not in any way alter EPA's right to take enforcement actions, as appropriate. The NPL is designed primarily for informational purposes and to assist EPA management. Section 300.425(e)(3) of the NCP states that the deletion of a site from the NPL does not preclude eligibility for future response actions, should future conditions warrant such actions.

IV. Basis for Site Deletion

The following information provides EPA's basis for deleting the Site from the NPL:

Site Background and History

The VPY Site is located at 432 North Ben Maddox Way in northeastern Visalia, Tulare County, California. The Site is bounded on the north by East Goshen Avenue, and on the west by North Ben Maddox Way. Visalia is located approximately midway between Fresno and Bakersfield in the Central Valley of California and is a growing metropolitan area with a population of approximately 110,000. Agriculture is the dominant industry in the region and walnuts, olives, and citrus are the primary crops.

The geologic strata underlying the VPY are composed of alluvial-fan deposits from the Kaweah River and its distributaries. The three hydrostratigraphic units beneath the site include: A shallow aquifer (30 to 50 feet bgs; dewatered since the 1980s), a shallow aquitard (50 to 75 feet bgs), an intermediate aquifer (75 to 100 feet bgs), an intermediate aquitard (100 to 125 feet bgs), and a deep aquifer (125 to about 180 feet bgs). Both aquitards generally consist of silty sand and clay materials, whereas the aquifers are composed primarily of fine-grained and coarse-grained sands. When saturated, the shallow aquitard restricts vertical groundwater movement. Aquifer testing of the intermediate hydrostratigraphic unit indicated a transmissivity of approximately 50,000 gallons per day per foot (gpd/ft). Short-term pumping from the deeper aquifer affects hydrostatic water elevation levels in the intermediate aquifer.

From 1925 to 1980, the Southern California Edison Company operated a fabrication yard to produce wooden poles for use in the distribution of electricity throughout the utility's service territory. Western red cedar trees were logged and transported to the yard, debarked, sized, shaped, and chemically preserved to resist attack from fungi and insects. The chemical preservation treatment process consisted of immersion of the wooden poles in heated tanks of preservative fluid. The treatment system consisted of two above-grade dip tanks, one in-ground full treatment tank, a fluid heating system, hot and cold fluid storage tanks, and underground product transfer lines. SCE primarily used creosote to treat its utility poles. However, in 1968, SCE began using pentachlorophenol (PCP), since PCP treated poles looked ''cleaner'' and were felt to be more suitable for use in an urban environment. A solution of pentachlorophenol and diesel (petroleum hydrocarbons) was substituted as the preservative for the wood preservation process, which contained low levels of dioxin and furan byproduct impurities of the PCP manufacturing process.

During the service life of the VPY, significant volumes of chemical preservatives were released into subsurface soils and groundwater. Groundwater contamination was first discovered in an on-site well in 1966. Hydrogeologic investigations were conducted between 1966 and 1975 to determine the nature and extent of contamination.

The types of chemicals found at the VPY include creosote compounds, PCP, and its associated impurities including octachlorodibenzo-P-dioxin. The sources of chemical release of creosote and PCP were primarily leakage from piping between the storage tanks and treatment tanks and cracks in the treatment tanks.

In 1989, the VPY was added to the Federal Superfund National Priorities List (NPL) (54 FR 13296) by the United States Environmental Protection Agency (USEPA).

Cleanup activities were first initiated in 1975, with the installation of extraction wells to remove contaminated groundwater and discharge to publicly owned treatment works (POTW). This action was followed by construction of the slurry wall in 1976–77, to prevent further downgradient migration of Wood Treating Chemicals (WTCs) in groundwater. In 1981, all treating facilities were demolished and approximately 2,300 cubic yards of contaminated soil were removed and disposed of into an off-site Class 1 disposal facility. Additionally, an on-site water treatment plant (WTP) consisting of filtration and adsorption system was built in 1985 and was successful in removing the chemicals of concern (COC) from the treated groundwater. The WTP was modified with additional filtration and gravity separation in 1987, which optimized plant performance by minimizing hazardous waste generation. The WTP pumped, treated, and discharged an average of 0.36 million gallons per day between 1985 and 1997. In 1997 the construction and operation of the Visalia Steam Remediation Project (VSRP) began and the volume of water treated increased to approximately 0.5 million gallons per day. The treated effluent was now discharged to Mill Creek under a National Pollutant Discharge Elimination System (NPDES) permit.

Currently there are no specific redevelopment plans for the Site. The City of Visalia has purchased all of the surrounding property formerly owned by SCE and has indicated an interest in purchasing the subject property (Site) after it is deleted from the NPL. It is understood the City would expand their current General Services operations to include the Site.

Remedial Investigation (RI)/Feasibility Study (FS)

In 1987, SCE and the State signed an agreement requiring the utility to perform a study to determine the nature and extent of site contamination and to recommend alternatives for final cleanup action.

The Remedial Investigation (RI) (Geraghty & Miller, 1992a) found a distribution of wood treating chemicals (WTCs) in both the vadose zone and saturated zone at the VPY. Additionally, at that time, a non-aqueous phase diesel hydrocarbon plume covered a horizontal area approximately 2.1 acres in size and extended vertically to approximately 125 feet below ground surface (bgs).

WTCs in the vadose zone and were found to be concentrated near points of release from immersion tanks and piping. Horizontal-radial dispersion of WTCs is believed to have occurred in the shallow vadose zones by capillary action of fine grained soils and transported laterally from the source area occurred during times when the vadose zone was saturated. Historical water table elevation levels were about 30 feet bgs and are currently measured at approximately 80 feet bgs. Depression of the regional water table elevation level initially occurred during the state-wide drought of the 1980's, and continues to decline from increased regional groundwater pumping for residential, agricultural, and industrial uses.

The Feasibility Study (FS) (Geraghty & Miller, 1992b) recommended enhanced in-situ biodegradation (EISB) in addition to continuing the pump-and-treat system as the recommended remedial action alternative.

Selected Remedy

The remedial action objectives for the site are:

- Prevent the migration of pole treating chemicals, present in unsaturated soil, to groundwater;
- Prevent occupational exposure to soil with constituent concentrations exceeding health-based concentrations;
- Prevent residential and occupational exposure to groundwater with chemical concentrations above remediation goals; and
- Prevent dermal occupational exposure to groundwater with chemical concentrations above remediation goals.

The State approved a Remedial Action Plan (RAP) in 1994 and EPA signed a Record of Decision (ROD) on June 10, 1994. The major components of the selected remedy described in the ROD include: In-situ bioremediation, pilot test of steam remediation, property access restrictions, and deed restrictions. The goals of the remedy are to remediate soils to industrial/commercial use levels and to remediate groundwater to drinking water standards. The contaminants of concern for both soil and groundwater are Pentachloropenol (PCP), Benzo(a)Pyrene, and $TCDD_{eqv}$.

Response Actions

In 1997, before implementing the remedy, the Visalia Steam Remediation Project (VSRP), a pilot study approved by DTSC and concurred by EPA, was initiated which used steam injection technique called Dynamic Underground Stripping (DUS) to mobilize chemicals of concern (COCs). The pilot study operated in two phases between May 1997 and June 2000. Phase 1 operations focused on the intermediate aquifer, with injection and extraction wells screened between 80 and 100 feet bgs. Phase 2 operations began in November 1998 and included steam injection and extraction below the intermediate aquitard, with injection wells screened between 125 and 145 feet bgs. Phase 2 operations continued until the COC removal rate precipitously dropped in June 2000.

Following cessation of the VSRP, an enhanced biological degradation system was installed and operated (SCE, 2001) to augment existing physical processes that were initiated by DUS and to encourage natural biological processes to flourish. This system was in operation from June 2000 until March 2004 and included vadose zone bioventing and saturated zone biosparging coupled with continued groundwater pump-and-treat operation. Construction completion of the enhanced biological degradation system was documented in the 2001 Preliminary Close Out Report (PCOR).

A post-remediation surface soil investigation was conducted at the Site in November 2004. Results for tetrachlorodibenzo-p-dioxin (TCDD) were detected at slightly above Site cleanup standard at four locations. As a result, and following recommendations of the 2005 Five-Year Review, contaminated surface soils between zero and ten feet below grade were removed in July 2006 and remaining soils were verified with confirmatory sampling to be below ROD cleanup standards.

Cleanup Goals

The cleanup goals from the ROD are the following:

	Soil (mg/kg)	Ground water (µg/L)
Petanchlorophenol (PCP)	17	1
Benzo(a)Pyrene	0.39	0.2
$TCDD_{eqv}$	0.001	30

The QA/QC program used throughout the design, construction, and operation of the remediation systems was outlined in a DTSC and EPA approved Quality Assurance Project Plan (QAPP). This program enabled EPA to determine that all analytical results reported were accurate and adequate and ensure satisfactory execution of the remedial action requirements consistent with the ROD.

Duplicate soil and groundwater samples were collected in accordance with the QAPP. Matrix spike, duplicate, and blank samples were analyzed by the laboratory, and the resulting data were provided to DTSC and EPA. The QA/QC program was also used for the quarterly groundwater monitoring program and cleanup standard attainment demonstration period.

During VSRP operations, the various forms of WTC removal or destruction were documented through continuous monitoring systems and regular volume measurements. These included:

- Non-aqueous Phase Product recovery
- Vapor-phase removal
- Liquid-phase removal

Non-aqueous Phase product was recovered from both dissolved air flotation and oil-water separation methods and transferred to storage tanks where the volume measurements were made. Vapor-phase recovery was measured as both total hydrocarbons and CO_2 equivalents of oxidized hydrocarbons via continuous emissions analyzer systems. Liquid phase removal was measured through a total organic carbon analyzer.

Quarterly groundwater monitoring was conducted from 1985 through June 2007 within, and outside the boundaries of the area subjected to steam remediation operations. Monitoring of extraction wells within and on the edge of the WTC plume was used as a tool to assess the success of WTC removal. Monitoring of offsite wells was conducted to ensure WTCs were not

escaping the groundwater extraction system.

Groundwater monitoring data from June 2004 through June 2007 were used to verify that all ROD groundwater cleanup standards had been met.

The Remedial Action Completion Report (SCE, 2008) documented that the post-remediation groundwater monitoring and soil removal actions performed met the ROD cleanup standards for soil and groundwater.

The Final Close Out Report (FCOR) was signed on May 19, 2009.

Operation and Maintenance

A ''Covenant to Restrict Use of Property, Environmental Restriction'', between Southern California Edison and the Department of Toxic Substances Control (DTSC), was recorded in Tulare County, California on May 23, 2007. This Covenant satisfies the ROD requirement for property access restrictions and a deed restriction. The Covenant outlines use restrictions (as well as Site operation and maintenance (O&M) activities). As remedial action objectives are based on industrial cleanup standards, prohibited Site uses include: Residences, human hospitals, schools, and day care centers for children. Prohibited activities include: Soil disturbance greater than ten feet bgs, and the installation of water wells for any purpose. The Covenant requires the Site owner to conduct an annual inspection of the property and prepare an Annual Inspection Report, describing how all of the site restrictions are being complied with. The Annual Report must certify that the property is being used in a manner consistent with the Covenant, and must be submitted to DTSC by June 15th of each year.

Five-Year Review

A statutory Five-Year Review was completed in September 2005 (DTSC/USEPA, 2005), pursuant to EPA's *Comprehensive Five-Year Review Guidance* (OSWER No. 9355.7–03B–P, June 2001). The Five-Year Review concluded that remedial actions taken at the Site were protective of human health and the environment in the short term, and institutional controls were needed in order to ensure long term human health protectiveness. A ''Covenant to Restrict Use of Property, Environmental Restriction'', between SCE and DTSC, was recorded in Tulare County, California on May 23, 2007.

The Five-Year Review also recommended an evaluation of contaminated surface soil; soils which were later removed and any remaining soils were verified with confirmatory sampling to be below the cleanup standards prescribed in the ROD. The next Five-Year Review will be completed by September 2010.

Community Relations Activities

Community involvement activities included the development of a Community Relations Plan (CRP), prior to initiation of the RI/FS activities. The CRP included development of a community profile and a list of key local contacts. The community profile indicated the surrounding area was mainly businesses which had little interest in the site cleanup activities. Notification of the issuance of the Draft ROD was made and copies of the Draft ROD were made publicly available at the local public library, DTSC and USEPA Region IX Superfund Records Center. A Public Notice was also placed in the local newspaper. A Public Meeting was held in Visalia, California on October 13, 1993, to provide information on the proposed cleanup. There were no members of the public in attendance at the meeting. A meeting was also held with members of the Visalia City Council, to apprise them of the proposed site cleanup activities. The Council members were supportive of the proposed cleanup actions and deletion of this site from the NPL.

Notification to the public of the initiation and completion of the 2005 Five-Year Review was made through a Public Notice in the Visalia Times-Delta newspaper. A copy of the completed Five-Year Review was placed in the Tulare County Library, USEPA Region IX Superfund Records Center.

Public participation activities for this Site have been satisfied as required in CERCLA 113(k) and Section 117. All documents and information which EPA relied on or considered in recommending this deletion are available for the public to review at the information repositories identified above.

Determination That the Site Meets the Criteria for Deletion From the NCP

This site meets all the site completion requirements specified in OSWER Directive 9320.2–09–A–P, Close Out Procedures for National Priorities List Sites. Specifically, that the following actions specified in the ROD have been implemented: (1) SCE applied an aggressive steam remediation technology to remove COCs in Site soils and groundwater beneath the site; (2) a post-remediation soil investigation verified meeting soil cleanup standards prescribed in the ROD; (3) groundwater has been monitored on a site-wide basis, and the monitoring results from June 2004 through June 2007 show that cleanup standards specified in the ROD have been met, and; (4) a Land Use Covenant between DTSC and SCE has been recorded with Tulare County that restricts site uses and activities.

The NCP specifies that EPA may delete a site from the NPL if ''all appropriate Fund-financed response under CERCLA has been implemented, and no further response action by responsible parties is appropriate.'' 40 CFR 300.425(e)(1)(ii). EPA, with the concurrence from the State of California, DTSC, believes that this criterion for deletion has been met. Consequently, EPA is deleting this Site from the NPL. Documents supporting this action are available in the Site repositories.

V. Deletion Action

The EPA, with concurrence of the State of California, DTSC, has determined that all appropriate response actions under CERCLA, other than operation, maintenance, monitoring and five-year reviews have been completed. Therefore, EPA is deleting the Site from the NPL.

Because EPA considers this action to be noncontroversial and routine, EPA is taking it without prior publication. This action will be effective September 25, 2009 unless EPA receives adverse comments by August 26, 2009. If adverse comments are received within the 30-day public comment period, EPA will publish a timely withdrawal of this direct final notice of deletion before its effective date of deletion, and it will not take effect; otherwise, EPA will prepare a response to comments and continue with the deletion process on the basis of the notice of intent to delete and the comments already received. There will be no additional opportunity to comment.

List of Subjects in 40 CFR Part 300

Environmental protection, Air pollution control, Chemicals, Hazardous substances, Hazardous waste, Intergovernmental relations, Penalties, Reporting and recordkeeping requirements, Superfund, Water pollution control, Water supply.

Dated: July 15, 2009.

Laura Yoshii,

Acting Regional Administrator, Region IX.

■ For the reasons set out in this document, 40 CFR part 300 is amended as follows:

PART 300—[AMENDED]

■ 1. The authority citation for part 300 continues to read as follows:

Authority: 33 U.S.C. 1321(c)(2); 42 U.S.C. 9601–9657; E.O. 12777, 56 FR 54757, 3 CFR,

1991 Comp., p. 351; E.O. 12580, 52 FR 2923; 3 CFR, 1987 Comp., p. 193.

Appendix B to Part 300 [Amended]

■ 2. Table 1 of Appendix B to part 300 is amended by removing ''Southern California Edison Co. (Visalia) Visalia, CA.''

[FR Doc. E9–17562 Filed 7–24–09; 8:45 am]
BILLING CODE 6560–50–P

FEDERAL COMMUNICATIONS COMMISSION

47 CFR Part 1

[MD Docket No. 08–65; FCC 09–38]

Assessment and Collection of Regulatory Fees for Fiscal Year 2008

AGENCY: Federal Communications Commission.

ACTION: Final rule.

SUMMARY: In this document, pursuant to section 9(b)(3) of the Communications Act, we eliminate two international regulatory fee categories from our Schedule of Regulatory Fees—International Public Fixed and International High Frequency (HF) Broadcast Stations.

DATES: Effective August 18, 2009, which is 90 days from the date of notification to Congress pursuant to section 9(b)(3) of the Communications Act.

FOR FURTHER INFORMATION CONTACT: Daniel Daly, Office of Managing Director at (202) 418–1832.

SUPPLEMENTARY INFORMATION: This is a summary of the Commission's Order, MD Docket 08–65, FCC 09–38, adopted on May 11, 2009 and released on May 14, 2009. The full text of this document is available on the Commission's Internet site at *http://www.fcc.gov.* It is also available for inspection and copying during regular business hours in the FCC Reference Center (Room CY–A257), 445 12th St., SW., Washington, DC 20554. The full text of this document also may be purchased from the Commission's duplication contractor, Best Copy and Printing Inc., Portals II, 445 12th St., SW., Room CY–B402, Washington, DC 20554; telephone (202) 488–5300; fax (202) 488–5563; e-mail *FCC@BCPIWEB.COM.* The Commission will send a copy of this Order to Congress and the Government Accountability Office pursuant to the Congressional Review Act, see 5 U.S.C. 801(a)(1)(A).

Summary of the Report and Order

1. In our *FY 2008 Report and Order,*[1] we sought comment on eliminating several categories of services from our schedule of regulatory fees.[2] We received no comments on these proposals. For the reasons set forth below, we eliminate the regulatory fee categories for International Public Fixed Radio [3] and International High Frequency Broadcast Stations.[4]

2. There is only one licensee in the International Public Fixed Radio category. In the *FY 2008 Report and Order* we stated that we did not expect any additional licensees or applications in this fee category, and that this category did not generate any regulatory fee revenue for the Commission in FY 2008.[5] As a result, we proposed in our *FY 2008 Report and Order* to eliminate this category from our schedule of regulatory fees in order to reduce the administrative burden on the Commission in assessing this regulatory fee category.[6] We received no comments on this issue. We, therefore, eliminate this category from the regulatory fee schedule.

3. There are only 25 licensed stations in the International High Frequency Broadcast Stations category. In FY 2008, two entities made payments in this fee category totaling $1,720. In the *FY 2008 Report and Order* we observed that most of these licensees are tax-exempt organizations (and exempt from paying regulatory fees), and as a result, we proposed to eliminate this category from our schedule of regulatory fees in order to reduce the administrative burden on the Commission.[7] We did not receive any comments on this issue. We, therefore, eliminate this category from the regulatory fee schedule.

4. Pursuant to section 9(b)(3) of the Act, we eliminate the International Public Fixed Radio and International High Frequency Broadcast Station fee categories from our schedule of regulatory fees.[8] Section 9(b)(4)(B) of the Act requires us to notify Congress 90 days before the effective date of this rule change.[9] In letters dated May 20, 2009, we provided Congress notification of this Order. These permitted amendments to our fee schedule will become effective on August 18, 2009, which is 90 days after notification to Congress, if there is no Congressional objection.

5. A final regulatory flexibility certification for the changes adopted in the Order herein is contained below. The Commission will send a copy of the Order, including the final regulatory flexibility certification, to the Chief Counsel for Advocacy of the Small Business Administration.

Final Regulatory Flexibility Certification

6. The Regulatory Flexibility Act of 1980, as amended (RFA) [10] requires that a regulatory flexibility analysis be prepared for rulemaking proceedings, unless the agency certifies that ''the rule will not have a significant economic impact on a substantial number of small entities.'' [11] The RFA generally defines ''small entity'' as having the same meaning as the terms ''small business,'' ''small organization,'' and ''small governmental jurisdiction.'' [12] In addition, the term ''small business'' has the same meaning as the term ''small business concern'' under the Small Business Act.[13] A small business concern is one which: (1) Is independently owned and operated; (2) is not dominant in its field of operation; and (3) satisfies any additional criteria established by the Small Business Administration (SBA).[14]

7. As required by the RFA,[15] an Initial Regulatory Flexibility Analysis (IRFA)

[1] *See Assessment and Collection of Regulatory Fees for Fiscal Year 2008,* MD Docket No. 08–65, Report and Order and Further Notice of Proposed Rulemaking, 24 FCC Rcd 6389 (2008) (''*FY 2008 Report and Order*'').

[2] In this Order, we adopted only the proposals concerning International Fixed Public Radio and International High Frequency Broadcast Stations raised in paragraphs 55 and 56 in the Further Notice of Proposed Rulemaking in the *FY 2008 Report and Order.* The remaining outstanding matters stemming from the August 8, 2008 Further Notice of Proposed Rulemaking may, however, be decided at a later time in a separate Report and Order. *See FY 2008 Report and Order.*

[3] *See* 47 CFR Part 23.

[4] *See* 47 CFR Part 73, Subpart F.

[5] *FY 2008 Report and Order* at paragraph 55.

[6] *FY 2008 Report and Order* at paragraph 55.

[7] *FY 2008 Report and Order* at paragraph 56.

[8] 47 U.S.C. 159(b)(3).

[9] 47 U.S.C. 159(b)(4)(B).

[10] The RFA, *see* 5 U.S.C. 601 *et seq.* has been amended by the Contract With America Advancement Act of 1996, Public Law 104–121, 110 Stat. 847 (1996) (CWAAA). Title II of the CWAAA is the Small Business Regulatory Enforcement Fairness Act of 1996 (SBREFA).

[11] 5 U.S.C. 605(b).

[12] 5 U.S.C. 601(6).

[13] 5 U.S.C. 601(3) (incorporating by reference the definition of ''small business concern'' in Small Business Act, 15 U.S.C. 632). Pursuant to 5 U.S.C. 601(3), the statutory definition of a small business applies ''unless an agency, after consultation with the Office of Advocacy of the Small Business Administration and after opportunity for public comment, establishes one or more definitions of such term which are appropriate to the activities of the agency and publishes such definition(s) in the **Federal Register**.''

[14] Small Business Act, 15 U.S.C. 632.

[15] *See* 5 U.S.C. 603. The RFA, *see* 5 U.S.C. 601–612, has been amended by the Small Business Regulatory Enforcement Fairness Act of 1996 (SBREFA), Public Law 104–121, Title II, 110 Stat. 857 (1996).

was incorporated in the Commission's Further Notice of Proposed Rulemaking.[16] The Commission sought written public comment on the proposals in the Further Notice of Proposed Rulemaking, including comment on the IRFA.

8. In our Further Notice of Proposed Rulemaking we sought comment on eliminating several categories of services from our schedule of regulatory fees. We received no comments on these proposals. For the reasons set forth below, in the Order contained herein, we eliminate the regulatory fee categories for International Public Fixed Radio [17] and International High Frequency Broadcast Stations.[18] There is only one licensee in the International Public Fixed Radio category. In the Further Notice of Proposed Rulemaking we stated that we did not expect any additional licensees or applications in this category, and it did not generate any regulatory fee revenue for the Commission in FY 2008.[19] Eliminating this category from our schedule of regulatory fees will not have not have a significant economic impact on a substantial number of small entities. In the International High Frequency Broadcast Stations category, there are only 25 licensed stations. In the Further Notice of Proposed Rulemaking we observed that most of these licensees are tax-exempt organizations that are exempt from payment of regulatory fees.[20] In FY 2008, two entities made payments in this fee category; those payments totaled $1,720. Eliminating this category from our schedule of regulatory fees will not have not have a significant economic impact on a substantial number of small entities.

9. *Certification:* Therefore, we certify that the requirements of this Order will not have a significant economic impact on a substantial number of small entities.

10. *Report to Small Business Administration:* The Commission will send a copy of this Order, including a copy of the Final Regulatory Flexibility Certification to the Chief Counsel for Advocacy of the Small Business Administration. The Order and Final Regulatory Flexibility Certification (or summaries thereof) will also be published in the **Federal Register**.

11. *Report to Congress:* The Commission will send a copy of this Final Regulatory Flexibility Certification, along with this Order, in a report to Congress pursuant to the Congressional Review Act, 5 U.S.C. 801(a)(1)(A).

Ordering Clauses

12. Accordingly, *it is ordered* that, pursuant to sections 4(i) and (j), 9, and 303(r) of the Communications Act of 1934, as amended, 47 U.S.C. 154(i), 154(j), 159, and 303(r), this Order is *hereby adopted.*

13. *It is further ordered* that Part 1 of the Commission's rules are amended as set forth herein, and these rules shall become effective 90 days after Congressional notification.

14. *It is further ordered* that the Commission's Consumer and Governmental Affairs Bureau, Reference Information Center, shall send a copy of this Order, including the Final Regulatory Flexibility Certification, to the Chief Counsel for Advocacy of the U.S. Small Business Administration.

List of Subjects in 47 CFR Part 1

Administrative practice and procedure.

Federal Communications Commission.

Marlene H. Dortch,

Secretary.

Rule Changes

■ For the reasons discussed in the preamble, the Federal Communications Commission amends 47 CFR part 1 to read as follows:

PART 1—PRACTICE AND PROCEDURE

■ 1. The authority citation for Part 1 continues to read as follows:

Authority: 15 U.S.C. 79 *et seq.*; 47 U.S.C. 151, 154(i), 154(j), 155, 157, 225, 303(r), and 309.

■ 2. Section 1.1156(a) is revised to read as follows:

§ 1.1156 Schedule of regulatory fees and filing locations for International Services.

(a) The following schedule applies for the listed services:

	Fee amount	Address
(1) Space Stations (Geostationary Orbit)		FCC, Space Stations.
(2) Space Stations (Non-Geostationary Orbit)		FCC, Space Stations.
(3) Earth Stations: Transmit/Receive & Transmit only (per authorization or registration).		FCC, Earth Station.

[16] *See Assessment and Collection of Regulatory Fees for Fiscal Year 2008,* MD Docket No. 08–65, Report and Order and Further Notice of Proposed Rulemaking, 24 FCC Rcd 6389 (2008) (''*FY 2008 Report and Order*'') at Appendix B.

[17] *See* 47 CFR Part 23.

[18] *See* 47 CFR Part 73, Subpart F.

[19] *FY 2008 Report and Order* at paragraph 55.

[20] *FY 2008 Report and Order* at paragraph 56.

* * * * *

[FR Doc. E9–17813 Filed 7–24–09; 8:45 am]

BILLING CODE 6712–01–P

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

50 CFR Part 679

[Docket No. 09100091344–9056–02]

RIN 0648–XQ51

Fisheries of the Exclusive Economic Zone Off Alaska; Pacific Ocean Perch in the West Yakutat District of the Gulf of Alaska

AGENCY: National Marine Fisheries Service (NMFS), National Oceanic and Atmospheric Administration (NOAA), Commerce.

ACTION: Temporary rule; closure.

SUMMARY: NMFS is prohibiting directed fishing for Pacific ocean perch by catcher processors participating in the limited access or opt-out fisheries that are subject to sideboard limits established under the Central Gulf of Alaska (GOA) Rockfish Pilot Program (RPP) in the Western Yakutat District of the GOA. This action is necessary to prevent exceeding the 2009 sideboard limits of Pacific ocean perch established for catcher processors participating in the limited access or opt-out fisheries in the Western Regulatory Area of the GOA.

DATES: Effective 1200 hrs, Alaska local time (A.l.t.), July 22, 2009, through 1200 hrs, A.l.t., July 31, 2009.

FOR FURTHER INFORMATION CONTACT: Steve Whitney, 907–586–7269.

SUPPLEMENTARY INFORMATION: NMFS manages the groundfish fishery in the GOA exclusive economic zone according to the Fishery Management Plan for Groundfish of the Gulf of Alaska (FMP) prepared by the North Pacific Fishery Management Council under authority of the Magnuson-Stevens Fishery Conservation and Management Act. Regulations governing fishing by U.S. vessels in accordance with the FMP appear at subpart H of 50 CFR part 600 and 50 CFR part 679.

The 2009 Pacific ocean perch sideboard limit established for catcher processors participating in the limited access or opt-out fisheries that are subject to sideboard limits in the RPP in the West Yakutat District is 727 metric tons (mt). The sideboard limit is established by the final 2009 and 2010 harvest specifications for groundfish of the GOA (74 FR 7333, February 17, 2009) and as posted as the 2009 Rockfish Program Catcher Processor Sideboards at *http://alaskafisheries.noaa.gov/sustainablefisheries/goarat/default.htm.*

In accordance with § 679.82(d)(7)(i)(A), the Administrator, Alaska Region, NMFS (Regional Administrator) has determined that the 2009 Pacific ocean perch sideboard limit established for catcher processors participating in the limited access or opt-out fisheries in the West Yakutat District of the GOA has been reached. The Regional Administrator is establishing the full sideboard limit as a directed fishing allowance of 727 mt, because no other groundfish fisheries are anticipated that would require a set aside of Pacific ocean perch as bycatch. Consequently, pursuant to § 679.82(d)(7)(ii) NMFS is prohibiting directed fishing for Pacific ocean perch by vessels subject to the sideboard sideboard limit established for catcher processors participating in the limited access or opt-out fisheries in the West Yakutat District.

After the effective date of this closure the maximum retainable amounts at § 679.20(e) and (f) apply at any time during a trip.

Classification

This action responds to the best available information recently obtained from the fishery. The Assistant Administrator for Fisheries, NOAA, (AA), finds good cause to waive the requirement to provide prior notice and opportunity for public comment pursuant to the authority set forth at 5 U.S.C. 553(b)(B) as such requirement is impracticable and contrary to the public interest. This requirement is impracticable and contrary to the public interest as it would prevent NMFS from responding to the most recent fisheries data in a timely fashion and would delay the closure of Pacific ocean perch sideboard limit for catcher processors participating in the limited access or opt-out fisheries in the Western Regulatory Area. NMFS was unable to publish a notice providing time for public comment because the most recent, relevant data only became available as of July 21, 2009.

The AA also finds good cause to waive the 30-day delay in the effective date of this action under 5 U.S.C. 553(d)(3). This finding is based upon the reasons provided above for waiver of prior notice and opportunity for public comment.

This action is required by § 679.82 and is exempt from review under Executive Order 12866.

Authority: 16 U.S.C. 1801 *et seq.*

Dated: July 22, 2009.

James P. Burgess,

Acting Director, Office of Sustainable Fisheries, National Marine Fisheries Service.

[FR Doc. E9–17835 Filed 7–22–09; 4:15 pm]

BILLING CODE 3510–22–S

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

50 CFR Part 679

[Docket No. 0910091344–9056–02]

RIN 0648–XQ52

Fisheries of the Exclusive Economic Zone Off Alaska; Pelagic Shelf Rockfish by Vessels Subject to Amendment 80 Sideboard Limits in the Western Regulatory Area of the Gulf of Alaska

AGENCY: National Marine Fisheries Service (NMFS), National Oceanic and Atmospheric Administration (NOAA), Commerce.

ACTION: Temporary rule; closure.

SUMMARY: NMFS is prohibiting directed fishing for pelagic shelf rockfish (PSR) by Amendment 80 vessels subject to sideboard limits in the Western Regulatory Area of the Gulf of Alaska (GOA). This action is necessary to prevent exceeding the 2009 PSR sideboard limit established for Amendment 80 vessels subject to sideboard limits in the Western Regulatory Area of the GOA.

DATES: Effective 1200 hrs, Alaska local time (A.l.t.), July 22, 2009, until 2400 hrs, A.l.t., December 31, 2009.

FOR FURTHER INFORMATION CONTACT: Steve Whitney, 907–586–7269.

SUPPLEMENTARY INFORMATION: NMFS manages the groundfish fishery in the GOA exclusive economic zone according to the Fishery Management Plan for Groundfish of the Gulf of Alaska (FMP) prepared by the North Pacific Fishery Management Council under authority of the Magnuson-Stevens Fishery Conservation and Management Act. Regulations governing fishing by U.S. vessels in accordance with the FMP appear at subpart H of 50 CFR part 600 and 50 CFR part 679. Regulations governing sideboard protections for GOA groundfish fisheries appear at subpart B of 50 CFR part 679.

The 2009 PSR sideboard limit established for Amendment 80 vessels subject to sideboard limits in the

Western Regulatory Area of the GOA is 626 metric tons (mt), as established by the 2009 and 2010 harvest specifications for groundfish of the GOA (74 FR 7333, February 17, 2009) and revisions (74 FR 11041, March 16, 2009).

In accordance with § 679.20(d)(1)(v)(A), the Administrator, Alaska Region, NMFS (Regional Administrator), has determined that the PSR sideboard limit established for Amendment 80 vessels subject to sideboard limits in the Western Regulatory Area of the GOA is sufficient to support a directed fishing allowance. Therefore, the Regional Administrator is establishing a sideboard directed fishing allowance for PSR as 621 mt in the Gulf of Alaska. The remaining 5 mt in the Gulf of Alaska will be set aside as bycatch to support other anticipated groundfish fisheries. In accordance with § 679.20(d)(1)(v)(C), the Regional Administrator finds that this Amendment 80 sideboard directed fishing allowance has been reached. Consequently, NMFS is prohibiting directed fishing for the 2009 PSR sideboard limit by Amendment 80 vessels subject to sideboard limits in the Western Regulatory Area of the GOA.

After the effective date of this closure the maximum retainable amounts at § 679.20(e) and (f) apply at any time during a trip.

Classification

This action responds to the best available information recently obtained from the fishery. The Assistant Administrator for Fisheries, NOAA (AA), finds good cause to waive the requirement to provide prior notice and opportunity for public comment pursuant to the authority set forth at 5 U.S.C. 553(b)(B) as such requirement is impracticable and contrary to the public interest. This requirement is impracticable and contrary to the public interest as it would prevent NMFS from responding to the most recent fisheries data in a timely fashion and would delay the directed fishing closure of PSR by Amendment 80 vessels subject to sideboard limits in the Western Regulatory Area of the GOA. NMFS was unable to publish a notice providing time for public comment because the most recent, relevant data only became available as of July 21, 2009.

The AA also finds good cause to waive the 30-day delay in the effective date of this action under 5 U.S.C. 553(d)(3). This finding is based upon the reasons provided above for waiver of prior notice and opportunity for public comment.

This action is required by § 679.20 and is exempt from review under Executive Order 12866.

Authority: 16 U.S.C. 1801 *et seq.*

Dated: July 22, 2009.

James P. Burgess,

Acting Director, Office of Sustainable Fisheries, National Marine Fisheries Service.

[FR Doc. E9–17841 Filed 7–22–09; 4:15 pm]

BILLING CODE 3510–22–S

Proposed Rules

Federal Register
Vol. 74, No. 142
Monday, July 27, 2009

This section of the FEDERAL REGISTER contains notices to the public of the proposed issuance of rules and regulations. The purpose of these notices is to give interested persons an opportunity to participate in the rule making prior to the adoption of the final rules.

DEPARTMENT OF AGRICULTURE

Agricultural Marketing Service

7 CFR Part 1207

[Doc. No. AMS–FV–09–0024; FV–09–706]

Potato Research and Promotion Plan; Assessment Increase

AGENCY: Agricultural Marketing Service, USDA.

ACTION: Proposed rule.

SUMMARY: This rule proposes to amend the Potato Research and Promotion Plan (Plan) to increase the assessment rate on handlers and importers of potatoes from 2.5 cents to 3 cents per hundredweight. The increase is provided for under the Plan which is authorized by the Potato Research and Promotion Act (Act). The National Potato Promotion Board, which administers the Plan, recommended this action to sustain and expand their promotional, research, advertising and communications programs.

DATES: Comments must be received by September 25, 2009.

ADDRESSES: Interested persons are invited to submit written comments on the Internet at: *http://www.regulations.gov* or to the Research and Promotion Branch, Fruit and Vegetable Programs, Agricultural Marketing Service (AMS), U.S. Department of Agriculture, Room 0632–S, Stop 0244, 1400 Independence Avenue, SW., Washington, DC 20250–0244; fax: (202) 205–2800. All comments should reference the docket number and the date and page number of this issue of the **Federal Register** and will be made available for public inspection in the above office during regular business hours or can be viewed at *http://www.regulations.gov*.

FOR FURTHER INFORMATION CONTACT: Deborah Simmons, Marketing Specialist, Research and Promotion Branch, Fruit and Vegetable Programs, AMS, USDA, 1400 Independence Avenue, SW., Room 0632, Stop 0244, Washington, DC 20250–0244; telephone: (202) 720–9915; or fax: (202) 205–2800; or email: *Deborah.simmons@ams.usda.gov*.

SUPPLEMENTARY INFORMATION: This rule is issued under the Potato Research and Promotion Plan [7 CFR Part 1207] which became effective March 9, 1972. The Plan is authorized under the Potato Research and Promotion Act [7 U.S.C. 2611–2627].

Executive Order 12866

The Office of Management and Budget (OMB) has waived the review process required by Executive Order 12866 for this action.

Executive Order 12988

This rule has been reviewed under Executive Order 12988, Civil Justice Reform. The rule is not intended to have retroactive effect and will not affect or preempt any other State or Federal law authorizing promotion or research relating to an agricultural commodity.

The Act allows handlers and importers subject to the Plan to file a written petition with the Secretary of Agriculture (Secretary) if they believe that the Plan, any provision of the Plan, or any obligation imposed in connection with the Plan, is not in accordance with the law. In any petition, the person may request a modification of the Plan or an exemption from the Plan. The petitioner will have the opportunity for a hearing on the petition. Afterwards, an Administrative Law Judge (ALJ) will issue a decision. If the petitioner disagrees with the ALJ's ruling, the petitioner has 30 days to appeal to the Judicial Officer, who will issue a ruling on behalf of the Secretary. If the petitioner disagrees with the Secretary's ruling, the petitioner may file, within 20 days, an appeal in the U.S. District Court for the district where the petitioner resides or conducts business.

Initial Regulatory Flexibility Act and Paperwork Reduction Act

In accordance with the Regulatory Flexibility Act (RFA) [5 U.S.C. 601 *et seq.*], the Agricultural Marketing Service (AMS) has considered the economic impact of this rule on small entities. The purpose of the RFA is to fit regulatory action to scale on businesses subject to such action so that small businesses will not be disproportionately burdened.

According to the National Potato Promotion Board (Board), there are approximately 1,600 potato growing operations, 1,143 handlers and 252 importers who are subject to the provisions of the Plan.

The Small Business Administration defines, in 13 CFR Part 121, small agricultural producers as those having annual receipts of no more than $750,000 and small agricultural service firms (handlers and importers) as those having annual receipts of no more than $7 million. Under these definitions, the majority of the handlers, producers and importers that would be affected by this rule would be considered small entities. Producers of less than 5 acres of potatoes are exempt from this program. Potato and potato products used for nonhuman food purposes, other than seed, are exempt from assessment but are subject to the disposition of exempted potatoes provisions of section 1207.515 of the regulations.

Under the current Plan, potato handlers and importers are required to pay a mandatory assessment of 2.5 cents per hundredweight. Handlers may collect assessments from the producer or deduct assessments from proceeds paid to the producer on whose potatoes the assessments are made. No more than one assessment shall be made on any potatoes or potato products. Funds collected by the board shall be used for research, development, advertising or promotion of potatoes and potato products and such other expenses for the administration, maintenance and functioning of the Board as may be authorized by the Secretary. The assessment at the current 2.5 cents per hundredweight generates about $10 million in annual revenues. The 2.5 cents per hundredweight assessment rate was established in August 2006 when the Plan was amended. The Plan is administered by the Board under U.S. Department of Agriculture supervision.

According to the Board, additional revenue is required in order to sustain and expand the promotional, research, advertising and communications programs. The Board approved the proposed assessment rate increase at its March 13, 2009, meeting. This proposed increase is consistent with section 1207.342(a) of the Plan which states that funds to cover the Board's expenses shall be acquired by the levying of assessments upon handlers and importers as designated in regulations recommended by the Board and issued

by the Secretary. Such assessments shall be levied at the rate fixed by the Secretary which shall not exceed one-half of one per centum of the immediate past ten calendar years United States average price received for potatoes by growers as reported by the Department of Agriculture. Currently, section 1207.510 of the Plan states that an assessment of 2.5 cents per hundredweight shall be levied on all potatoes produced within the 50 states of the United States and an assessment rate of 2.5 cents per hundredweight shall be levied on all tablestock potatoes imported into the United States for ultimate consumption by humans and all seed potatoes. An assessment rate of 2.5 cents per hundredweight shall be levied on the fresh weight equivalents of imported frozen or processed potatoes for ultimate consumption by humans. Further, not more than one such assessment may be collected on any potatoes or potato products.

In March 2007, the Board conducted its most recent ''Evaluation of Grower-Funded Value-Added Activities by the United States Potato Board.'' This study was completed by Dr. Timothy Richards and Dr. Paul Patterson of the Morrison School of Management and Agribusiness at Arizona State University. The study presented an econometric evaluation of the demand impact of board marketing, public relations and research activities and a simulation model that estimates the return on grower investment in board programs. The primary objective of this research was to estimate the long-run return on grower's investment in each board activity, in both domestic and export marketing.

The U.S. potato market was volatile over the five year period (CY 2002–CY 2006). According to USDA data, the per capita consumption of potatoes, of all forms in the U.S., changed very little over this period. Grower prices, on the other hand, were strong in 2001, but fell through the 2004 marketing season. High prices may have been due to the activities of a newly formed potato industry cooperative comprising some 65% of the U.S. potato supply. In 2001 the board adopted a new business model for increasing potato consumption, eschewing traditional generic advertising programs for retail partnerships, public relations, marketing research, product development and active export promotion programming. The objective of this study was to determine the return on investment to grower funds invested in board marketing activities. The relevant markets for U.S. potatoes are defined as the domestic retail market (frozen, refrigerated, chips, bagged fresh, bulk fresh and dehydrated potatoes), the domestic food service market (skins, chips, formed products, hash browns, mashed, frozen, French fries, and whole potatoes), and export marketing for fresh (table stock and chipping stock), frozen, dehydrated and seed potatoes.

Econometric models were used to estimate the demand impact of board activities. Five models were created for this purpose: Domestic Retail, Domestic Foodservice model, Domestic ''Best Practices'' model to estimate the effect of targeted category management programs, and two export marketing models: One for Fresh, Frozen and Dehydrated potatoes and another for Seed potatoes. All models are estimated with data made available from board records and include retail scanner data, food service supplier survey data and USDA export data.

The study found that U.S. potato growers have received a significantly positive return on their investment in USPB activities over the FY–2002—FY–2006 period covered by the analysis. The study found that each is highly effective in increasing potato demand, although the final return varies widely among them. On a per dollar of investment basis the most likely estimate of the return to the Domestic Retail program is $4.4743 in long run grower profit, while the Foodservice program provides a return of $3.035 per dollar of investment. Considering the Best Practices program on its own, which is part of the Domestic Retail effort, category management investments provide incremental revenue of $1.018 per dollar of program cost. On the export side, Frozen Consumer program generates a return of $1.27, while Frozen Trade activities return $1.11 and $1.19, respectively, while Fresh Consumer and Trade activities yield $10.36 and $6.93 per dollar. In all cases, these Return on Investments estimates are at least as high as growers could earn on investments elsewhere and, in many cases, several times greater.

The Board's Executive Committee collectively recognized the need to sustain the momentum of current board programs, which continue to ''Maximize Return on Grower Investment.'' According to the Board, the board's domestic and global market strategies to increase demand for U.S. Potatoes and Potato Products have been highly successful, but industry and economic conditions have eroded the board's ability to fund the future needs of all its programs. The board's Executive Committee proposed the ½ cent increase in the assessment rate in order to maintain the value in all programs. Over the last three fiscal years, however, several tends have asserted downward pressure on the board programs continued ability to sustain the industry recognized high level of return. Acreage decreases, produced by right-sizing supply with demand, and competition for acres to produce other crops, has reduced revenues to the board. Higher costs, driven by worldwide inflation have increased the expenses of implementing board programs. The weakened U.S. dollar, in relation to the exchange rates of foreign currencies, has reduced the Board's purchasing power in obtaining needed goods and services to operate international marketing programs in foreign markets.

Alternatives were also considered by the Board, which included cutting back funding of marketing programs, international programs, and the new ''Potatoes Goodness Unearthed'' campaign. All of the alternatives were rejected by the Board. The Board believes that programs should not be reduced at a time when it's absolutely critical that they continue providing them, that it's a reasonable cost for keeping programs going and that the Board needs to maintain adequate reserves to handle food safety issues and other projects. The Board feels the direction it is going is in line with the grower's vision and that the assessment fee is money well invested. The Board believes that in order to continue to fund these and new programs, an increase in the assessment rate by ½ cent per hundredweight is needed.

Using the USDA previous 10-year average potato prices formula in the Plan, the assessment rate could be increased to 3.08 cents per hundredweight. However, it was determined that the rate would be increased ½ cent from 2.5 cents to 3 cents per hundredweight and that ½ cent would be easy to understand, communicate and ultimately to put into a collection system and at a full year of collection will deliver enough revenue to maintain the current programs with modest expansion. The ½ cent increase falls within the allowed limits in the Plan.

Using the 10-year average market price and average yield values of potatoes in the U.S., the increase in assessment rate to 3 cents per hundredweight will result in an average cost to growers of $11.93 per acre, which represents less than one half of one percent (0.445 percent) of potato revenue per acre. Calculated at the current market price for potatoes of $8.36 per cwt: At the 3 cents per cwt assessment the total assessment for

growers would be 0.359 percent of gross revenue per acre.

All potatoes are assessed the same assessment rate into the program regardless of origin—either U.S. grown or imported as fresh potatoes or potato products. The same assessments for domestic production and imports will be unchanged by the rate increase.

In order to sustain and expand the promotional, research, and communication programs, the Board decided to propose an increase assessment rate of ½ cent per hundredweight for a total assessment rate of 3 cents per hundredweight on all domestic and imported potatoes and potato products.

This rule does not impose additional recordkeeping requirements on handlers or importers of potatoes. Producers of fewer than 5 acres of potatoes annually are exempt.

There are no Federal rules that duplicate, overlap, or conflict with this rule.

In accordance with the Office of Management and Budget (OMB) regulation [5 CFR Part 1320] which implements the Paperwork Reduction Act of 1995 [44 U.S.C. Chapter 35], the information collection and recordkeeping requirements that are imposed by the Plan have been approved previously under OMB control number 0581–0093. This rule does not result in a change to the information collection and recordkeeping requirements previously approved.

We have performed this Initial Regulatory Flexibility Analysis regarding the impact of this proposed amendment to the Plan on small entities, and we invite comments concerning potential effects of this amendment on small businesses.

Background

Under the Plan, which became effective March 9, 1972, the Board administers a nationally coordinated program of research, development, advertising, and promotion designed to strengthen potatoes' competitive position and expand domestic and foreign markets for potatoes and potato products. This program is financed by assessments on handlers and importers of potatoes and potato products. The Plan specifies that handlers are responsible for collecting and submitting assessments to the Board, reporting their handling of potatoes, and maintaining records necessary to verify their reporting. Handlers may collect assessments from producers or deduct assessments from the proceeds paid to the producer on whose potatoes the assessments are made. Importers are responsible for payment of assessments to the Board on potatoes imported into the United States through the U.S. Customs Service and Border Protection.

Based on the most recent data available in March 2009 from USDA, the average price received for potatoes for the period 1999 to 2008 was $6.74 per hundredweight. One-half of 1 per centum of this average price would allow a maximum assessment rate of $0.0337 cents per hundredweight. If the board had elected to use $0.0337 cents per hundredweight in its fiscal year 2008, when 449.7 million hundredweight of potatoes were assessed, the Board would have realized assessment dollars of $15,155,963 (vs. $11,243,296 actual collected in FY 2008), an increase in assessment revenue of $3.9 million.

This rule proposes to increase the assessment rate by ½ cent per hundredweight for handlers and importers. Currently, the assessment rate is 2.5 cents per hundredweight levied on potatoes handled within the 50 States of the United States and 2.5 cents per hundredweight on imports of potatoes and potato products. According to the Board, in order to sustain and expand the promotion, research, and communications programs at present levels, the Board contends that additional revenue is required. The proposed ½ cent per hundredweight assessment rate increase is estimated to generate $1 to $1.5 million in new revenue, depending upon production levels.

Based on assessments collected for crop year 2008, about 87 percent of this production total was from domestic assessments, with the remainder from imports. The Board states that the proposed assessment rate increase would enable it to expand media services, educational programs, research programs, and establish, maintain, and expand domestic and foreign markets for potatoes. Some of the additional revenue, the Board states, would be used to increase the reserve fund over a two-year period to provide for adequate cash flow. Based on the 2008 crop year production figures, the Board would have received $13,491.955 million in total assessments at the 3 cents per hundredweight assessment rate on potatoes.

In addition, the Board, whose members represent all potato producing states as well as importers, voted to propose the assessment rate increase at its March 13, 2009 meeting, which was open to the public like all other meetings. The vote to recommend the assessment increase was 68 in favor and 7 against, of the Board members present at the meeting. Most of the dissenting votes concerned the impact the increase would have on small growers.

This rule would amend the rules and regulations issued under the Plan, increasing the assessment rate ½ cent per hundredweight. The rate would increase from 2.5 cents to 3 cents per hundredweight. Handlers and importers of potatoes and potato products will each pay 3 cents per hundredweight on potatoes annually. This proposed increase is consistent with section 308(e) of the Act that permits changes in the assessment rate through notice and comment procedures. Section 1207.342(a) of the Plan states that assessment rates shall be fixed by the Secretary in accordance with section 308(e) of the Act. Further, not more than one assessment may be collected on any lot of potatoes. The Board is recommending the proposed assessment rate increase based on continued inflation and rising cost expenditures since the current assessment rate places budget constraints on promotional, research, and communications programs and would result in reducing the programs in the future.

A 60-day comment period is provided to allow interested persons to respond to this proposal. All written comments received in response to this rule by the date specified would be considered prior to finalizing this action.

List of Subjects in 7 CFR Part 1207

Administrative practice and procedure, Advertising, Consumer information, Marketing agreements, Potatoes, Promotion, Reporting and recordkeeping requirements.

For the reasons set forth in the preamble, Part 1207, Chapter XI of Title 7 is proposed to be amended as follows:

PART 1207—POTATO RESEARCH AND PROMOTION PLAN

1. The authority citation for 7 CFR Part 1207 continues to read as follows:

Authority: 7 U.S.C. 2611–2627 and 7 U.S.C. 7401.

2. Section 1207.510 is amended by revising paragraphs (a)(1), (b)(1) and the Table in paragraph (b)(3) as follows:

§ 1207.510 Levy of assessments.

(a) * * * (1) An assessment rate of 3 cents per hundredweight shall be levied on all potatoes produced within the 50 states of the United States.

* * * * *

(b) * * * (1) An assessment rate of 3 cents per hundredweight shall be levied on all tablestock potatoes imported into the United States for ultimate

consumption by humans and all seed potatoes imported into the United States. An assessment rate of 3 cents per hundredweight shall be levied on the fresh weight equivalents of imported frozen or processed potatoes for ultimate consumption by humans. The importer of imported tablestock potatoes, potato products, or seed potatoes shall pay the assessment to the board through the U.S. Customs Service and Border Protection at the time of entry or withdrawal for consumption of such potatoes and potato products into the United States.

* * * * *

(3) * * *

Tablestock potatoes, frozen or processed potatoes, and seed potatoes	Assessment	
	Cents/cwt	Cents/kg
0701.10.0020	3.0	0.066
0701.10.0040	3.0	0.066
0701.90.1000	3.0	0.066
0701.90.5010	3.0	0.066
0701.90.5020	3.0	0.066
0701.90.5030	3.0	0.066
0701.90.5040	3.0	0.066
0710.10.0000	6.0	0.132
2004.10.4000	6.0	0.132
2004.10.8020	6.0	0.132
2004.10.8040	6.0	0.132
2005.20.0070	4.716	0.104
0712.90.3000	21.429	0.472
1105.10.0000	21.429	0.472
1105.20.0000	21.429	0.472
2005.20.0040	21.429	0.472
2005.20.0020	12.240	0.27
1108.13.0010	27.0	0.595

* * * * *

Dated: July 21, 2009.

David R. Shipman,

Associate Administrator, Agricultural Marketing Service.

[FR Doc. E9–17804 Filed 7–24–09; 8:45 am]

BILLING CODE 3410–02–P

DEPARTMENT OF AGRICULTURE

Agricultural Marketing Service

7 CFR Part 1218

[Document Number AMS–FV–09–0021; FV–09–704]

Blueberry Promotion, Research, and Information Order; Assessment Increase

AGENCY: Agricultural Marketing Service, USDA.

ACTION: Proposed rule.

SUMMARY: This rule proposes to amend the Blueberry Promotion, Research, and Information Order (Order) to increase the assessment rate on producers and importers who produce or import more than 2,000 pounds of highbush blueberries annually from $12 per ton to $24 per ton. The increase provided under the Order is authorized by the Commodity Promotion, Research, and Information Act of 1996 (Act). The U.S. Highbush Blueberry Council (Council) which administers the Order recommended this action to expand their promotional activities and add an advertising component to bridge the potential gap between highbush blueberry demand and future supply. Furthermore, the Council recommended to use the additional revenue to strengthen existing consumer, food service, and food manufacturer publicity; to expand their health research; to develop an educational campaign on good management practices and food safety within the United States as well as internationally.

DATES: Comments must be received by September 25, 2009.

ADDRESSES: Interested persons are invited to submit written comments on the Internet at: *http://www.regulations.gov* or to the Research and Promotion Branch, Fruit and Vegetable Programs, Agricultural Marketing Service (AMS), U.S. Department of Agriculture (Department), Room 0632–S, Stop 0244, 1400 Independence Avenue, SW., Washington, DC 20250–0244; facsimile: (202) 205–2800. All comments should reference the docket number and the date and page number of this issue of the **Federal Register** and will be made available for public inspection in the above office during regular business hours or can be viewed at *http://www.regulations.gov.* All comments received will be posted without change, including any personal information provided.

FOR FURTHER INFORMATION CONTACT: Jeanette Palmer, Marketing Specialist, Research and Promotion Branch, Fruit and Vegetable Programs, AMS, U.S. Department of Agriculture, Stop 0244, 1400 Independence Avenue, SW., Room 0632–S, Washington, DC 20250–0244; telephone: (888) 720–9917; facsimile: (202) 205–2800; or electronic mail: *Jeanette.Palmer@ams.usda.gov.*

SUPPLEMENTARY INFORMATION: This rule is issued under the Blueberry Promotion, Research, and Information Order [7 CFR Part 1218]. The Order is authorized under the Commodity Promotion, Research, and Information Act of 1996 [7 U.S.C. 7401–7425].

Executive Order 12866

The Office of Management and Budget (OMB) has waived the review process required by Executive Order 12866 for this action.

Executive Order 12988

This rule has been reviewed under Executive Order 12988, Civil Justice Reform. The rule is not intended to have retroactive effect and will not affect or preempt any other State or Federal law authorizing promotion or research relating to an agricultural commodity.

The Act provides that any person subject to an order may file a written petition with the Department if they believe that the order, any provision of the order, or any obligation imposed in connection with the order, is not established in accordance with law. In any petition, the person may request a modification of the order or an exemption from the order. The petitioner is afforded the opportunity for a hearing on the petition. After a hearing, the Department would rule on the petition. The Act provides that the district court of the United States in any district in which the petitioner resides or conducts business shall have the jurisdiction to review the Department's ruling on the petition, provided a complaint is filed not later than 20 days after the date of the entry of the ruling.

Initial Regulatory Flexibility Act and Paperwork Reduction Act

In accordance with the Regulatory Flexibility Act (RFA) [5 U.S.C. 601 *et seq.*], the Agricultural Marketing Service has considered the economic impact of this action on the small producers, first handlers, and importers that would be affected by this rule. The purpose of the RFA is to fit regulatory action to scale on businesses subject to such action so that small businesses will not be disproportionately burdened.

The Small Business Administration defines, in 13 CFR Part 121, small agricultural producers as those having annual receipts of no more than $750,000 and small agricultural service firms as those having annual receipts of no more than $7 million. There are approximately 2,000 producers, 200 first handlers, 50 importers, and 4 exporters of highbush blueberries subject to the program. Most of the producers would be classified as small businesses under the criteria established by the Small Business Administration. Most importers, first handlers, and exporters would not be classified as small businesses. Producers who produce less than 2,000 pounds of highbush blueberries annually are exempt from this program. Importers who import less than 2,000 pounds of fresh and frozen highbush blueberries annually are also exempt from this program.

Under the current Order, domestic producers and importers who produce or import more than 2,000 pounds of highbush blueberries annually are required to pay an assessment to the Council. The current assessment rate is $12 per ton levied on highbush blueberries produced within the 50 States, the District of Columbia, the Commonwealth of Puerto Rico, and the territories and possessions of the United States and on imports of more than 2,000 pounds into the United States. Assessments under the program are used by the Council to finance promotion, health research and communication programs designed to increase consumer demand for highbush blueberries in the United States and international markets. The assessment rate of $12 per ton which became effective on August 16, 2000, generates approximately $2.4 million in annual revenues. The Order is administered by the Council with oversight by the Department.

The Council has made projections of funds generated at the current $12 per ton on forecasted highbush blueberry production increases. Based on these projections, the Council has calculated that the domestic market promotion budget would not increase sufficiently in the next few years to accomplish the Council's expanded market promotion goal of adding a meaningful advertising campaign to the highbush blueberry industry. The funds are distributed as follows: a 15 percent allocation to administration and general expenses; a 20 percent allocation to research; and a 65 percent allocation to market promotion.

Currently, the Council and the North American Blueberry Council (NABC) share office space which is a cost effective measure for both organizations which allows the Council to keep administration and general expenses within 15 percent or less of the budget. The NABC signed a lease for new office space and NABC and the Council will relocate in June 2009. As a result, the Council will save an estimated $8,715 on rental fees annually. The Council has also changed meeting locations to less expensive places in order to cut costs. For example, the Council is currently considering whether to keep future meetings at airport hub locations such as Atlanta, Georgia. Even with such cost-cutting measures, the Council still requires additional revenue to maintain and expand its promotional and research activities.

The Council believes that additional revenue is required to aggressively promote the consumption of a growing supply of highbush blueberries, expand health research and marketing among consumers and industrial users within the United States and international countries, and increase educational effort in the areas of good management practices and food safety. The Council approved the proposed assessment rate of $24 per ton at its February 28, 2009, meeting. This proposed increase is consistent with section 517 (d) of the Act that permits changes in the assessment rate through notice and comment rulemaking procedures. Section 1218.52 (c) of the Order states that assessments are to be levied at a rate of $12 per ton on all highbush blueberries. The assessment rate may be reviewed and modified with the approval of the Secretary of Agriculture (Secretary).

The Council made this recommendation in light of projected 2008 highbush blueberry production totals that continue to set historic production levels. The Council stated that successive large highbush blueberry crops have led to increased inventory levels and a weakening of the market. Using data from the NABC's Blueberry Statistical Record, in 2007, the North American highbush blueberry industry produced 356 million pounds of highbush blueberries, an increase of 16 million pounds over the previous record of 340 million pounds produced in 2006. Based on most recent estimates from the NABC Blueberry Statistical Record, the 2008 highbush blueberry crop has once again surpassed records and totaled an estimated 407 million pounds.

The North American highbush blueberry production has increased more than five fold over the past 40 years from 70 million pounds in 1968 to the estimated 407 million pounds produced in 2008 and more than twice the level produced ten years ago of 185 million pounds in 1998. Domestic projections continue to show a growing supply of highbush blueberries in the years to come based upon the amount of new plantings as well as the recent enhancement of existing fields that are gradually being replaced with higher yielding varieties, or are benefiting from improved farming practices.

Based on the Council's World Blueberry Acreage and Production Report, highbush blueberry acreage in North America increased from 71,075 acres in 2005 to an estimated 95,607 acres in 2008, a 35 percent increase in just three years. The United States share of this total increased from 56,665 acres in 2005 to 74,992 acres in 2008, a 32 percent increase. Most of this acreage growth is coming from the higher yielding western and southern states. Highbush blueberry production volume is expected to increase significantly from these regions in the coming years. Since the domestic market production for highbush blueberries is increasing, the Council recommends expanding their promotional activities by strengthening their existing consumer, food service, and food manufacturer publicity and export market promotion programs to keep highbush blueberry demand ahead of supply.

In 2008, the United States exported 13,791 metric tons of fresh highbush blueberries worth over $69 million. Canada is the principal destination for United States exports–accounting for nearly 84 percent of the total in 2008. Other key markets included the United Kingdom at 7 percent and Japan at 6 percent of the total. The remaining 3 percent of the United States exports were sent mostly to Asian countries.

The United States exports of frozen highbush blueberries totaled 5,785 metric tons in 2008 and were valued over $17 million. The largest United States export market for frozen highbush blueberries is Canada which accounted for 47 percent of the total quantity exported in 2008. Japan was the second largest United States market accounting for 39 percent. The remaining 14 percent of United States exports were sent mainly to other Asian, United Kingdom, and European countries.

In 2008, the United States imported 45,105 metric tons of fresh highbush blueberries worth over $229 million. The largest imports of highbush blueberries came from Chile which accounted for 61 percent of the total in 2008. Other major suppliers of fresh highbush blueberries were Canada at 19 percent and Argentina at 17 percent of the total. The remaining 3 percent of imported highbush blueberries came from New Zealand and Uruguay.

The United States imports of frozen highbush blueberries totaled 19,152 metric tons in 2008 and were valued over $64 million. The bulk of the United States frozen highbush blueberries imports came from Canada which accounted for 78 percent of total in 2008. Other major suppliers of frozen highbush blueberries were Chile with 16 percent of the total, Argentina with 5 percent and the Netherlands with 1 percent.

According to the Council, assessments received in 2008 reached $2.4 million. Of the total, the Council received $830,222 from import assessment collections which is approximately 35 percent of the Council's total budget. The Council has projected import assessment collections at $850,000 for the 2009 budget year.

In the international market, highbush blueberry production has increased in Canada, Mexico, Latin America, Europe, and Asia. The highbush blueberry acreage worldwide has nearly doubled in the past five years from an estimated 83,299 acres in 2003 to an estimated 163,065 acres in 2008. Based on the data in the Council's 2007–2008 World Acreage and Production Report, North America represented 77 percent of the total worldwide highbush blueberry acreage in 2003 (64,360 acres), but just 59 percent of the estimated total acreage in 2008 (95,607 acres).

Most of the worldwide growth over the past five years has taken place in South America which has increased acreage from an estimated 6,939 acres in 2003 to an estimated 39,703 acres in 2008, a nearly six fold increase with the largest growth in Chile and Argentina. Most of the growth in European production, which has increased from 8,978 acres in 2003 to 18,038 in 2008, has taken place in Spain, Germany, and Poland. Asian highbush blueberry production has increased during this five-year period from 2,372 acres to 7,870 acres with most of the growth taking place in China and to a lesser extent Japan. Acreage in Australia and New Zealand has not significantly increased during this period.

Given worldwide acreage estimates, projections show that given optimal conditions with no crop losses or disruptions, total worldwide highbush blueberry production has the potential to increase from an estimated 606 million pounds in 2008 to an estimated 1.5 billion pounds by the year 2015, more than two times the current level of production in the next seven years. This total does not include lowbush (wild) blueberry production, which at the current time averages around 200 million pounds per year. These projections are considered ''optimal'' forecasts and are based on the potential of what has been planted to date as well as upon assumptions of favorable crop years in all international highbush blueberry growing regions. During this period North American highbush blueberry production is estimated to increase from 407 million pounds in 2008 to 890 million pounds by the year 2015, more than two times the current level of production. With expanded worldwide production of highbush blueberries projected to increase supply, the Council recommends that additional revenue be used to explore new markets internationally as well as find new uses and applications for highbush blueberries in the United States.

Even though the highbush blueberry production is expected to increase over the next few seasons, the rate of increase should begin to slow as planting is expected to decline over this time period, as it is traditionally the case with other crops that have experienced the same growth patterns as the current one enjoyed by the highbush blueberry industry. However, a corresponding rapid growth in per capita consumption over the next seven years will be needed to keep pace with domestic and international highbush blueberry production in order to maintain a supply and demand balance. The Council believes that if they do not conduct more aggressive promotional efforts, the total demand may fall short of the projected supply.

Due to the domestic and international highbush blueberry production increase, the effect of the highbush blueberry supply is reflected in current frozen highbush blueberry inventory. The most recent Department's National Agricultural Statistic Service Public Cold Storage Report (Report), shows February 2009 inventory of frozen highbush and lowbush blueberries at 130 million pounds, an increase of 36 million pounds over the total of 94 million pounds held in inventory at the same time in 2008. Given the anticipated size of the 2008 highbush blueberry crop, carry in inventory at the start of the 2008 season, and projected movement of the 2008 crop (even at levels above those recorded in previous years), the Council projects a significant increase in carry out inventory at the start of the 2009 domestic highbush blueberry season. Although fresh highbush blueberry demand and movement in the United States continues to increase and frozen highbush blueberry exports have been increasing over the past three seasons, there are still increased amounts of highbush blueberries in cold storage, particularly over the last three years. This trend is expected to continue unless efforts are taken to more aggressively promote highbush blueberries and work toward a more balanced supply and demand situation.

The Council has found the increase in the highbush blueberry interest reflected in per capita consumption increases in the United States. According to the NABC Statistical Record 2007, the United States has seen impressive gains in per capita consumption over the past ten years. Total highbush blueberry consumption both fresh and processed has increased by 68 percent from slightly over 13 ounces per person in 1997 to just over 22 ounces per person in 2007. Most of this increase has been in the fresh market with fresh consumption nearly doubling over this period from 4.8 ounces per person to an estimated 9.2 ounces per person. During this same period, process (frozen) highbush blueberry consumption was up 55 percent from 8.4 ounces to 13 ounces per person.

With the proposed increased assessment rate, the financial commitment of the United States highbush blueberry industry for generic research and promotion activity would increase 100 percent in current dollars. For example, if the Council applies the proposed assessment increase to the 2008 crop year, in which collections totaled $2.4 million, the increase in assessments collected would have been approximately an additional $2.4 million for a total of $4.8 million. The Council plans to use additional funds to broaden current promotional programs with consumers, food service, and food manufacturers within the United States and international countries. Furthermore, the Council plans to add an advertising component to expand the reach and frequency of highbush blueberry messages and explore new and evolving media options offered through the Internet and web-based communications. The Council is currently supporting age-related disease and vision studies with a number of universities the additional funding will enable human clinical research trials to begin. By changing the assessment rate to $24 per ton, the Council stated that the additional funding will allow for a greater educational effort in the areas of good management practices and food safety.

According to the Department's National Agricultural Statistic Service Noncitrus Fruits and Nuts 2008 Preliminary Summary notes the United States price per pound for fresh highbush blueberries in 2008 totaled $2.11 per pound and $0.859 per pound for processed highbush blueberries. Using these prices, the proposed $12 per ton assessment rate increase will cost the producer approximately .006 cents per pound which represents an increase of approximately .003 percent of the total fresh price per pound and .007 percent of the total processed price per pound.

Section 1218.55 of the Order requires the Council to conduct an independent evaluation of the effectiveness of the program conducted by the Council pursuant to the Act every five years. The Council submits the independent evaluation to the Department which is available to the public. An econometric evaluation titled ''An Economic Analysis of Domestic Market Impacts of the U.S. Highbush Blueberry Council'' was conducted by Dr. Harry Kaiser of

Cornell University in 2005. The study evaluated the Council's progress based on data from 2001 to 2004. The estimated demand equation used in the study was simulated to determine the market impacts of the Council's promotion activities for the period of 2001 to 2004. In the baseline scenario, promotion expenditures were set equal to actual levels from 2001 to 2004. In another scenario without the Council's marketing activities, promotion expenditures were set equal to zero for the same period. The difference between the two scenarios gives the total impact of the Council promotion programs on domestic highbush blueberry commercial disappearance. The simulation results indicated that the Council had a major impact on annual highbush blueberry demand in the United States. From 2001 to 2004, the Council's promotion activities increased total highbush blueberry commercial disappearance by 36 million pounds, or 9 million pounds per year. This represents an annual increase in highbush blueberry commercial disappearance of almost three percent during this period. The study concluded that the promotional spending by the Council clearly had a positive effect on domestic highbush blueberry demand.

The evaluation also indicated that generic highbush blueberry promotion by the Council had a positive impact on the highbush blueberry growers' price over this period. The average increase in price ranged from 2.3 cents per pound in the case of the least elastic supply response, to 0.8 cents per pound in the case of the most elastic supply response. The average impact over all supply responses was 1.4 cents per pound. According to the evaluation, had there not been generic highbush blueberry promotion by the Council, the average growers' price would have been 1.4 cents per pound, or 1.8 percent, lower from 2001 to 2004.

The benefits of the Council program were highlighted using a Benefit Cost Ratio (BCR) analysis. An average BCR was computed for the generic promotion activities of the Council, and the BCR exceeded 1.0 for every supply response considered in the simulation. For the least elastic supply response, the average BCR was 13.22. This implies that, on average over the period 2001–2004, the benefits of the Council promotion programs have been over 13 times greater than the costs. At the opposite end of the spectrum in supply response, the average BCR was computed to be 4.46, implying that the benefits of the Council were over four times greater than the costs. Given the wide range of supply responses considered in the analysis, and the fact that the BCR was above 1.0 in all cases, there is significant evidence that the Council's promotion programs have been profitable for the domestic highbush blueberry industry.

According to the Council, such findings give added confidence that an expanded market promotion program will help the industry to work toward a supply and demand balance in the coming years as highbush blueberry production expands at an increasing rate.

With regards to alternatives, the Council evaluated a media plan designed to advertise to consumers nationwide with a proposed rate of $18 per ton on highbush blueberries. At this assessment rate level, the Council could continue to support its current market promotion efforts and add a $1 million media budget for advertising. This level would result in 45 percent reach and a frequency of 4 of the target audience which is 18 million out of the 40 million of the United States population. The Council discussed the rate of $18 per ton and determined that the highbush blueberry potential supply and demand situation would require a need to create greater awareness than the level that could be generated at $18 per ton. Therefore, the Council decided to recommend the rate of $24 per ton on highbush blueberries which is the first assessment increase since the Council was established in August 2000.

This rule does not impose additional recordkeeping requirements on producers, first handlers, exporters, or importers of highbush blueberries. Producers of fewer than 2,000 pounds of highbush blueberries and importers of less than 2,000 pounds of fresh and frozen highbush blueberries annually are exempt.

There are no Federal rules that duplicate, overlap, or conflict with this rule.

In accordance with the Office of Management and Budget (OMB) regulation [5 CFR part 1320] which implements the Paperwork Reduction Act of 1995 [44 U.S.C. Chapter 35], the information collection and recordkeeping requirements that are imposed by the Order have been approved previously under OMB control number 0581–0093. This rule does not result in a change to the information collection and recordkeeping requirements previously approved.

We have performed this Initial Regulatory Flexibility Analysis regarding the impact of this proposed amendment to the Order on small entities, and we invite comments concerning potential effects of this amendment on small businesses.

Background

Under the Order, the Council administers a nationally coordinated program of research, development, advertising, and promotion designed to strengthen the position of highbush blueberries in the marketplace, and to establish, maintain, and expand markets for highbush blueberries. This program is financed by assessments on producers growing 2,000 pounds or more of highbush blueberries and importers who import 2,000 or more pounds of highbush blueberries per year. The Order specifies that handlers are responsible for collecting and submitting the producer assessments to the Council and maintaining records necessary to verify their reporting(s). Importers are responsible for payment of assessments to the Council on highbush blueberries imported into the United States through the U.S. Customs Service and Border Protection.

This rule proposes to increase the assessment rate to $24 per ton for producers and importers who produce and import more than 2,000 pounds of highbush blueberries annually. Currently, the assessment rate is $12 per ton levied on highbush blueberries produced within the 50 States, the District of Columbia, the Commonwealth of Puerto Rico, and the territories and possessions of the United States and imports of more than 2,000 pounds into the United States. In order to expand promotion, health research, new uses and applications for highbush blueberries, and education about good management practices for food safety, the Council believes that additional revenue is needed. The proposed $24 per ton assessment rate increase is estimated to generate $2.4 million in new revenue for a total of $4.8 million depending on production levels. For the 2008 crop year, total production was 408 million pounds of highbush blueberries resulting in $2.4 million in assessment collections. Of the total, the Council received $830,222 from import assessment collections which is approximately 35 percent of the Council's total budget. The Council has projected import assessment collections at $850,000 for the 2009 budget year. With the additional revenue, the Council would continue to dedicate 65 percent of their budget to market promotions and expand its existing promotional programs directed to consumers, food service and food manufacturers and add an advertising component to reach consumers nationwide, as well as internationally.

Also, the Council would invest additional funds to explore new uses and applications for highbush blueberries in the domestic and international markets. Furthermore, the Council stated that it will use the additional resources to expand the health research studies.

Furthermore, the Council whose members represent all highbush blueberry producing states as well as importers voted to increase the assessment rate at its February 28, 2009, meeting. The vote to recommend the assessment increase was nine in favor and two against of the Council members present at the meeting. The two voters against the change expressed concern about how the growers might respond to an assessment increase given the overall economic climate the industry is facing and noted how an assessment increase might impact voting on the program continuance referendum in 2011. One of the two dissenters noted that in a meeting held in his region prior to the Council's meeting, the growers had discussed and supported the $18 per ton assessment rate increase, but did not discuss the $24 per ton increase. Accordingly, he did not feel comfortable voting for the change. Both dissenting voters stated that they were willing to support an $18 per ton assessment increase instead of the proposed $24 per ton.

The Council evaluated a media plan designed to advertise to consumers nationwide with a proposed rate of $18 per ton on highbush blueberries. At this assessment rate level, the Council could continue to support its current market promotion efforts and add a $1 million media budget for advertising. This level would result in 45 percent reach and a frequency of 4 of the target audience which is 18 million out of the 40 million of the United States population. The Council discussed the rate of $18 per ton and determined that the highbush blueberry potential supply and demand situation would require a need to create greater awareness than the level that could be generated at $18 per ton. Therefore, the Council voted to recommend the rate of $24 per ton on highbush blueberries which is the first assessment increase since the Council was established in August 2000.

If adopted, the Council's recommended assessment rate would be applicable to the 2010 highbush blueberry crop. The higher assessment rate on the 2010 crop would generate additional dollars allocated for the 2011 budget year. The Council plans to increase the domestic marketing budget beginning that year to $4 million which would allow for as much as $2 million allocation to advertising to increase the frequency of the Council's message. According to the Council, this increase would gain greater awareness for highbush blueberries.

This rule would amend the rules and regulations under the Order. The rate would increase the assessment from $12 per ton to $24 per ton on highbush blueberries. This proposed increase is consistent with section 517(d) of the Act that permits changes in the assessment rate through notice and comment procedures. Section 1218.52(c) of the Order state assessments can be levied at a rate of $12 per ton on all highbush blueberries. The assessment rate will be reviewed and may be modified with the approval of the Secretary.

The Council is recommending the proposed assessment rate increase for the following reasons: (1) A potential gap between highbush blueberry demand and future supply in the United States; (2) efforts are necessary to strengthen the Council's existing consumer, food service, and food manufacturer publicity and export market promotion programs and add an advertising component to expand the reach and frequency of the highbush blueberry message; (3) the Council plans to invest additional revenue to explore new markets both domestic and international, as well as to explore new uses and application for highbush blueberries; (4) to expand its investment in more health research and move to human clinical trials to discover additional product attributes; and (5) added funding will allow for greater educational effort in the critical areas of good management practices and food safety. Accordingly, section 1218.52(c) of the Order would be revised.

A 60-day comment period is provided to allow interested persons to respond to this proposal. All written comments received in response to this rule by the date specified would be considered prior to finalizing this action.

List of Subjects in 7 CFR Part 1218

Administrative practice and procedure, Advertising, Consumer information, Marketing agreements, Blueberry promotion, Reporting and recordkeeping requirements.

For the reasons set forth in the preamble, Part 1218, Chapter XI of Title 7 is proposed to be amended as follows:

PART 1218—BLUEBERRY PROMOTION, RESEARCH, AND INFORMATION ORDER

1. The authority citation for 7 CFR part 1218 continues to read as follows:

Authority: 7 U.S.C. 7411–7425; 7 U.S.C. 7401.

2. In § 1218.52, paragraph (c) is revised to read as follows:

§ 1218.52 Assessments.

* * * * *

(c) Such assessments shall be levied at a rate of $24 per ton on all blueberries. The assessment rate will be reviewed, and may be modified with the approval of the Secretary, after the first referendum is conducted as stated in § 1218.71(b).

* * * * *

Dated: July 21, 2009.

David R. Shipman,

Associate Administrator, Agricultural Marketing Service.

[FR Doc. E9–17802 Filed 7–24–09; 8:45 am]

BILLING CODE 3410–02–P

DEPARTMENT OF ENERGY

10 CFR Part 430

[Docket No. EERE–2008–BT–TP–0020]

RIN 1904–AB89

Energy Conservation Program for Consumer Products: Test Procedures for Residential Furnaces and Boilers

AGENCY: Office of Energy Efficiency and Renewable Energy, Department of Energy.

ACTION: Notice of proposed rulemaking and public meeting.

SUMMARY: In order to implement recent amendments to the Energy Policy and Conservation Act (EPCA), the U.S. Department of Energy (DOE) proposes to amend its test procedures for residential furnaces and boilers to provide for measurement of standby mode and off mode energy consumption. Specifically, the proposed amendments would incorporate into the DOE test procedures the International Electrotechnical Commission's (IEC) Standard 62301, *Household electrical appliances—Measurement of standby power* (First Edition 2005–06), as well as language to clarify application of this standard for measuring standby mode and off mode power consumption in furnaces and boilers. In addition, the proposed amendments would add new calculations to determine annual energy consumption associated with standby mode and off mode measured power. Finally, the amendments would modify existing energy consumption equations to integrate standby mode and off mode energy consumption into the calculation of overall annual energy consumption of

these products. DOE is also announcing a public meeting to discuss and receive comments on the issues presented in this notice.

DATES: DOE will hold a public meeting on Tuesday, August 18, 2009, from 9 a.m. to 4 p.m., in Washington, DC. DOE must receive requests to speak at the public meeting before 4 p.m., Tuesday, August 4, 2009. DOE must receive a signed original and an electronic copy of statements to be given at the public meeting before 4 p.m., Tuesday, August 11, 2009.

DOE will accept comments, data, and information regarding the notice of proposed rulemaking (NOPR) before and after the public meeting, but no later than October 13, 2009. For details, see section V, ''Public Participation,'' of this NOPR.

ADDRESSES: The public meeting will be held at the U.S. Department of Energy, Forrestal Building, Room 8E–089, 1000 Independence Avenue, SW., Washington, DC 20585–0121. To attend the public meeting, please notify Ms. Brenda Edwards at (202) 586–2945. Please note that foreign nationals visiting DOE Headquarters are subject to advance security screening procedures. Any foreign national wishing to participate in the meeting should advise DOE as soon as possible by contacting Ms. Edwards to initiate the necessary procedures.

Any comments submitted must identify the NOPR on Test Procedures for Residential Furnaces and Boilers, and provide the docket number EERE–2008–BT–TP–0020 and/or regulatory information number (RIN) 1904–AB89. Comments may be submitted using any of the following methods:

1. *Federal eRulemaking Portal: http://www.regulations.gov*. Follow the instructions for submitting comments.

2. *E-mail: RFB-2008-TP-0020@ee.doe.gov*. Include docket number EERE–2008–BT–TP–0020 and/or RIN 1904–AB89 in the subject line of the message.

3. *Mail:* Ms. Brenda Edwards, U.S. Department of Energy, Building Technologies Program, Mailstop EE–2J, 1000 Independence Avenue, SW., Washington, DC 20585–0121. Please submit one signed paper original.

4. *Hand Delivery/Courier:* Ms. Brenda Edwards, U.S. Department of Energy, Building Technologies Program, 6th Floor, 950 L'Enfant Plaza, SW., Washington, DC 20024. Telephone: (202) 586–2945. Please submit one signed paper original.

For detailed instructions on submitting comments and additional information on the rulemaking process, see section V, ''Public Participation,'' of this document.

Docket: For access to the docket to read background documents or comments received, visit the U.S. Department of Energy, Resource Room of the Building Technologies Program, 6th Floor, 950 L'Enfant Plaza, SW., Washington, DC 20024, (202) 586–2945, between 9 a.m. and 4 p.m., Monday through Friday, except Federal holidays. Please call Ms. Brenda Edwards at the above telephone number for additional information about visiting the Resource Room.

FOR FURTHER INFORMATION CONTACT: Mr. Mohammed Khan, U.S. Department of Energy, Office of Energy Efficiency and Renewable Energy, Building Technologies Program, EE–2J, 1000 Independence Avenue, SW., Washington, DC 20585–0121. Telephone: (202) 586–7892. E-mail: *Mohammed.Khan@ee.doe.gov*.

Mr. Eric Stas, U.S. Department of Energy, Office of the General Counsel, GC–72, 1000 Independence Avenue, SW., Washington, DC 20585–0121. Telephone: (202) 586–9507. E-mail: *Eric.Stas@hq.doe.gov*.

For information on how to submit or review public comments and on how to participate in the public meeting, contact Ms. Brenda Edwards, U.S. Department of Energy, Office of Energy Efficiency and Renewable Energy, Building Technologies Program, EE–2J, 1000 Independence Avenue, SW., Washington, DC 20585–0121. Telephone: (202) 586–2945. E-mail: *Brenda.Edwards@ee.doe.gov*.

SUPPLEMENTARY INFORMATION:

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I. Background and Authority

Title III of the Energy Policy and Conservation Act (42 U.S.C. 6291 *et seq.*; EPCA or the Act) sets forth a variety of provisions designed to improve energy efficiency. Part A of Title III (42 U.S.C. 6291–6309) establishes the ''Energy Conservation Program for Consumer Products Other Than Automobiles,'' including residential furnaces and boilers (all of which are referenced below as ''covered products'').[1] (42 U.S.C. 6291(1)–(2) and 6292(a)(5))

Under the Act, this program consists essentially of three parts: (1) Testing; (2) labeling; and (3) establishing Federal energy conservation standards. The testing requirements consist of test procedures that manufacturers of covered products must use as the basis for certifying to DOE that their products comply with applicable energy conservation standards adopted under EPCA and for representing the efficiency of those products. Similarly, DOE must use these test procedures to

[1] All references to EPCA refer to the statute as amended through the Energy Independence and Security Act of 2007, Public Law 110–140.

determine whether the products comply with standards adopted under EPCA. Under 42 U.S.C. 6293, EPCA sets forth criteria and procedures for DOE's adoption and amendment of such test procedures. EPCA provides that ''[a]ny test procedures prescribed or amended under this section shall be reasonably designed to produce test results which measure energy efficiency, energy use, * * * or estimated annual operating cost of a covered product during a representative average use cycle or period of use, as determined by the Secretary [of Energy], and shall not be unduly burdensome to conduct.'' (42 U.S.C. 6293(b)(3)) In addition, if DOE determines that a test procedure amendment is warranted, it must publish proposed test procedures and offer the public an opportunity to present oral and written comments on them, with a comment period no less than 60 or more than 270 days. (42 U.S.C. 6293(b)(2)) Finally, in any rulemaking to amend a test procedure, DOE must determine ''to what extent, if any, the proposed test procedure would alter the measured energy efficiency * * * of any covered product as determined under the existing test procedure.'' (42 U.S.C. 6293(e)(1)) If DOE determines that the amended test procedure would alter the measured efficiency of a covered product, DOE must amend the applicable energy conservation standard accordingly. (42 U.S.C. 6293(e)(2))

On December 19, 2007, the Energy Independence and Security Act of 2007 (EISA 2007), Public Law 110–140, was enacted. The EISA 2007 amendments to EPCA, in relevant part, require DOE to amend the test procedures for all covered products to include measures of standby mode and off mode energy consumption. Specifically, section 310 of EISA 2007 provides definitions of ''standby mode'' and ''off mode'' (42 U.S.C. 6295(gg)(1)(A)); however, the statute permits DOE to amend these definitions in the context of a given product (42 U.S.C. 6295(gg)(1)(B)). The legislation requires integration of such energy consumption ''into the overall energy efficiency, energy consumption, or other energy descriptor for each covered product, unless the Secretary determines that—

(i) The current test procedures for a covered product already fully account and incorporate the standby and off mode energy consumption of the covered product; or

(ii) Such an integrated test procedure is technically infeasible for a particular covered product, in which case the Secretary shall prescribe a separate standby mode and off mode energy use test procedure for the covered product, if technically feasible.'' (42 U.S.C. 6295(gg)(2)(A)).

Under the statutory provisions introduced by EISA 2007, any such amendment must consider the most current versions of International Electrotechnical Commission (IEC) Standard 62301, *Household electrical appliances—Measurement of standby power*, (First Edition 2005–06) and IEC Standard 62087, *Methods of measurement for the power consumption of audio, video, and related equipment* (Second Edition, 2008–09).[2] *Id.* For residential furnaces and boilers, DOE must prescribe any such amendment to the test procedures by September 30, 2009. (42 U.S.C. 6295(gg)(2)(B)(iv))

DOE's current test procedure for residential furnaces and boilers is found at 10 CFR part 430, subpart B, appendix N, *Uniform Test Method for Measuring the Energy Consumption of Furnaces and Boilers.* DOE established its test procedures for furnaces and boilers in a final rule published in the **Federal Register** on May 12, 1997. 62 FR 26140. This procedure establishes a means for determining annual energy efficiency and annual energy consumption of gas-fired, oil-fired, and electric furnaces and boilers. It is important to note that gas-fired and oil-fired furnaces and boilers consume both fossil fuel and electricity. Electric furnaces and boilers only consume electricity. In this test procedure, fossil-fuel energy consumption is accounted for comprehensively over a full-year cycle, thereby satisfying EISA 2007 requirements for fossil-fuel standby mode and off mode energy consumption. However, electrical energy consumption in standby mode and off mode is not accounted for in the current test procedures.

II. Summary of the Proposed Rule

First, today's NOPR tentatively concludes that, for gas-fired and oil-fired furnaces and boilers, the current test procedures already fully account for and incorporate the standby mode and off mode fossil-fuel energy consumption. (42 U.S.C. 6295(gg)(2)(A)(i))

Second, since standby mode and off mode electrical energy consumption are not included in the existing test procedures, today's NOPR proposes to amend the test procedures for residential furnaces and boilers to address the statutory requirement to incorporate standby mode and off mode electrical energy consumption. Specifically, measurement procedures would be added, and annual energy consumption equations would be expanded to include standby mode and off mode electrical energy use. In addition, it is noted that one applicable energy efficiency descriptor (*i.e.*, Energy Factor) would automatically reflect incorporation of standby mode and off mode energy use, without the need for specific amendment.

In amending the current test procedures, DOE proposes to incorporate by reference IEC Standard 62301, *Household electrical appliances—Measurement of standby power* (First edition, 2005–06), regarding test conditions and testing procedures for measuring the average standby and off mode power.[3] DOE also proposes to incorporate into the test procedure clarifying definitions of ''active mode,'' ''standby mode,'' and ''off mode'' that are specific to furnaces and boilers but consistent with definitions for those terms set forth in the EISA 2007 amendments to EPCA. Further, DOE proposes to include in the test procedures additional language that would clarify the application of IEC Standard 62301 for measuring standby mode and off mode power consumption. (42 U.S.C. 6295(gg)(1)(A))

The EISA 2007 amendments to EPCA direct DOE to amend the furnace and boiler test procedures to integrate standby mode and off mode energy consumption into the overall energy efficiency, energy consumption, or other energy descriptor for these products, if technically feasible. If that is not technically feasible, DOE must instead prescribe a separate standby mode and off mode energy use test procedure, if technically feasible. (42 U.S.C. 6295(gg)(2)(A))[4] DOE believes that it is technically feasible to integrate standby mode and off mode energy consumption into the descriptors found in the existing furnace and boiler test procedures. Accordingly, today's

[2] IEC standards are available for purchase at: *http://www.iec.ch.*

[3] EISA 2007 directs DOE to also consider IEC Standard 62087 when amending its test procedures to include standby mode and off mode energy consumption. See 42 U.S.C. 6295(gg)(2)(A). However, IEC Standard 62087 addresses the methods of measuring the power consumption of audio, video, and related equipment. As explained subsequently in this notice, the narrow scope of this particular IEC Standard reduces its relevance to today's proposal.

[4] In either case, for the reasons explained below, these new modes (*i.e.*, standby mode and off mode) would be fully accounted for in the residential furnace and boiler test procedure, but they might not be fully accounted for in the regulating metric (annual fuel utilization efficiency) set by statute. Instead, it may be necessary to specify integrated metrics by fuel type (*i.e.*, fossil fuel versus electricity).

proposal would integrate standby mode and off mode energy consumption into the test procedures' overall annual energy consumption equations. However, it is important to note that DOE is not proposing amendments to the current regulating quotient specified under EPCA, Annual Fuel Utilization Efficiency (AFUE), because that metric currently accounts for fossil fuel energy consumption in standby mode and off mode but is not suitable for measurement of electrical energy consumption in those modes. (42 U.S.C. 6291(22)) A full discussion of the reasoning for not fully integrating standby and off mode energy into the current regulating quotient, AFUE, is provided in section III.F below.

EPCA provides that amendments to the test procedures that include standby mode and off mode energy consumption will not be used to determine compliance with previously established standards. (*See* 42 U.S.C. 6295(gg)(2)(C).) Furthermore, EPCA requires DOE to determine whether a proposed test procedure amendment would alter the measured efficiency of a product, and require adjusting existing standards. (42 U.S.C. 6293(e)) However, the current Federal energy conservation standards for furnaces and boilers utilize an energy efficiency descriptor that would be unaffected by the inclusion of new provisions in the test procedures meeting the requirements of EISA 2007 and pertaining to standby mode and off mode energy consumption. Therefore, today's notice would not affect a manufacturer's ability to demonstrate compliance with previously established standards.

These amended test procedures would become effective 30 days after the date of publication in the **Federal Register** of the final rule in this test procedures rulemaking. However, DOE's amended test procedure regulations codified in the CFR would clarify that the procedures and calculations for electrical standby mode and off mode energy consumption need not be performed to determine compliance with the current energy conservation standards for residential furnaces and boilers, because the current energy conservation standards do not account for electrical standby mode and off mode power consumption. Instead, manufacturers would be required to use the test procedures' electrical standby mode and off mode provisions to demonstrate compliance with DOE's energy conservation standards on the compliance date of any final rule establishing amended energy conservation standards for these products that address standby mode and off mode power consumption.

III. Discussion

A. EISA 2007 as Applied to Residential Furnaces and Boilers

As a first step in addressing the requirements of EISA 2007, the relevant terms and concepts from that statute need clarification as they apply to residential furnaces and boilers. While EISA 2007 provided definitions and concepts that are generally applicable and workable within the context of the existing furnace and boiler test procedure, some clarifying language is necessary to address the specific characteristics of the products relevant to this rulemaking. The following paragraphs discuss these proposed clarifications.

Section 310(3) of EISA 2007 defines ''active mode'' as ''* * * the condition in which an energy-using product—(I) is connected to a main power source; (II) has been activated; and (III) provides 1 or more main functions.'' (42 U.S.C. 6295(gg)(1)(A)(i)) This statutory definition of ''active mode'' is comparable to what is referred to as ''on-cycle'' in the current residential furnaces and boilers test procedures. (ANSI/ASHRAE Standard 103–1993, *Method of Testing for Annual Fuel Utilization Efficiency of Residential Central Furnaces and Boilers*) On-cycle is the period during the heating season when the furnace or boiler is performing its main function (*i.e.,* heat delivery). The heat delivery process begins with the activation of the burner or electric resistance heating element followed by, or simultaneous with, the activation of circulating fans or pumps, and ends with the deactivation of these components. As discussed in section III.G below, the duration of on-cycle can be estimated in the test procedure as burner operating hours (BOH).

In light of the above, DOE is proposing to add a definition of ''active mode'' in the furnace and boiler test procedure. See section 2.6 of Appendix N to subpart B of part 430.

Section 310(3) of EISA 2007 defines ''standby mode'' as ''* * *the condition in which an energy-using product—(I) is connected to a main power source; and (II) offers 1 or more of the following user oriented or protective functions: (aa) To facilitate the activation or deactivation of other functions (including active mode) by remote switch (including remote control), internal sensor, or timer. (bb) Continuous functions, including information or status displays (including clocks) or sensor-based functions.'' (42 U.S.C. 6295(gg)(1)(A)(iii)) The statutory definition of ''standby mode'' is comparable to what is referred to as ''off-cycle'' in the current residential furnace and boiler test procedure. The duration of off-cycle would be the total time during the heating season when the furnace or boiler is connected to power sources and not in active mode.

In light of the above, DOE is proposing to add a definition of ''standby mode'' in the furnace and boiler test procedure. See section 2.7 of Appendix N to subpart B of part 430.

Section 310(3) of EISA 2007 defines ''off mode'' as ''* * * the condition in which an energy-using product—(I) is connected to a main power source; and (II) is not providing any standby or active mode function.'' (42 U.S.C. 6295(gg)(1)(A)(ii)) For residential furnaces and boilers, off mode would be periods during the non-heating season where the furnace or boiler is connected to power sources but is not activated to provide heat. This period is called non-heating season in the test procedures.

In light of the above, DOE is proposing to add a definition of ''off mode'' in the furnace and boiler test procedure: See section 2.8 of Appendix N to subpart B of part 430.

DOE believes these proposed definitions provide the clarification necessary to carry out the requirements of EISA 2007 without unduly complicating matters by addressing possible inaccuracies such as those that might be caused by slight differences in run times for burners and air circulating fans. DOE requests comments on this approach for characterizing active, standby, and off mode operation of residential furnaces and boilers.

B. Gas and Oil Energy Consumption in the Furnace and Boiler Test Procedures

DOE is tentatively concluding that the existing test procedures for residential furnaces and boilers already fully account for and integrate standby mode and off mode fossil fuel energy consumption for gas-fired and oil-fired furnaces and boilers. Underlying the basis for this conclusion is the manner in which fossil fuel is accounted for in two of the test procedure's three annual efficiency metrics (*i.e.,* heating seasonal efficiency and AFUE). The third annual efficiency metric (Energy Factor), as mentioned above, has an accounting of electrical energy consumption for gas-fired and oil-fired furnaces and boilers and will be discussed in detail in proceeding sections of this document.

The existing test procedure for gas-fired and oil-fired furnaces and boilers specifies a flue loss test that is augmented by calculations of jacket loss

and latent heat loss. Accordingly, the test procedure requires measurement of temperatures and percent concentration of carbon dioxide (CO_2) in the flue. CO_2 measurements are used to infer how complete the combustion process is and how much excess air is passing through the appliance and into the flue. Temperature measurements are used to infer the value of the heat energy in this air flow through the flue. The product's fossil fuel and electric input is measured within a tolerance of the nameplate input.[5] As specified in the ASHRAE 103–1993, temperature and CO_2 measurements are taken during a sequencing of three standardized tests: (1) Steady-state; (2) cool-down; (3) and heat-up. These tests generally represent the cycling encountered when the furnace or boiler is in operation. The result is a uniform set of temperature and CO_2 measurements which can be used to capture the thermal performance of the tested unit. From this relatively limited set of test data, on-cycle and off-cycle losses are determined using integration coefficients and a complete suite of calculations that address various installations and design features. Additional testing and calculation may apply to some furnaces and boilers with certain design features (*e.g.,* condensate collection for condensing units, and direct measurement of draft coefficients for units that restrict combustion side air flow during the off cycle).

The on-cycle and off-cycle losses, along with jacket loss and latent heat loss, are all expressed as a percentage loss relative to the input energy.

The resulting general format for the heating seasonal efficiency is as follows:

$$Effy_{hs} = 100 - L_{L,A} - L_j - L_{s,\,on} - L_{s,off} - L_{i,\,on} - L_{i,off}$$

where:

$L_{L,A}$ = average latent heat loss of the fuel
L_j = jacket heat loss
$L_{s,on}$ = on-cycle sensible heat loss[6]
$L_{s,off}$ = off-cycle sensible heat loss
$L_{i,on}$ = on-cycle infiltration loss[7]
$L_{i,off}$ = off-cycle infiltration loss

The test procedure's on-cycle and off-cycle are essentially identical in meaning to EISA 2007's ''active mode'' and ''standby mode,'' respectively. There are some minor differences, resulting from the nature of a flue loss methodology. For example, the $L_{s,off}$ is the quantification of the sensible heat loss occurring during the off-cycle, not the energy input consumed during the off-cycle, which would more closely track the EISA 2007 ''standby mode'' definition. Nonetheless, the test procedure's on-cycle/off-cycle format, coupled with the clarifying definitions of ''active mode'' and ''standby mode,'' provides a complete accounting of fossil fuel energy loss during the entire heating season. In EISA 2007 terminology, both active and standby modes of fossil fuel consumption are fully accounted for and integrated into the Heating Seasonal Efficiency descriptor.

A second efficiency descriptor, AFUE, includes an accounting of the non-heating season fossil fuel energy consumption (*i.e.,* pilot light non-heating energy consumption). Non-heating season directly relates to the EISA 2007 definition of ''off mode.'' Accordingly, AFUE provides a full accounting of fossil fuel off mode energy consumption pursuant to EISA 2007.

In addition to the efficiency descriptors discussed above, the test procedure's annual energy consumption calculations also represent a complete accounting of fossil fuel consumption.

In sum, the energy consumption equations in the existing test procedures are an entire year's accounting of fossil fuel consumption (*i.e.,* 8,760 hours), which includes active, standby, and off mode energy consumption, as envisioned under EISA 2007.[8] Given that EISA 2007 does not prescribe any time periods over which to measure the energy consumption for all three modes, DOE believes it is reasonable to interpret the Act as permitting the consolidation of active, standby, and off modes together into an entire year's accounting.

In consideration of all of the above, and pursuant to section 310(2)(A)(i) of EISA 2007, DOE has tentatively concluded that the existing test procedures for residential furnaces and boilers already fully account for and integrate standby mode and off mode fossil-fuel energy consumption.

C. Electrical Energy Accounting in the Existing Test Procedures for Gas-Fired and Oil-Fired Furnaces and Boilers

The treatment of electricity consumption in the test procedures for residential gas-fired and oil-fired furnaces and boilers begins with the measurement of full-load wattages of major electrical components, referred to as ''auxiliaries'' in that document. These measurements are termed ''PE'' and ''BE'' in the test procedures. ''PE'' is the electric power to the power burner, and ''BE'' is the electrical power to the conditioned air blower for furnaces, or, electrical power to the circulating pump for boilers. A separate measure of power to the interrupted ignition device, ''PE_{IG},'' is required if such device is present. These wattage values are used in calculations of annual energy consumption of electricity.

Estimation of annual electricity consumption from full-load wattages involves a complicated set of equations that estimate the expected annual hours of use or run hours for the electric auxiliaries. In performing such calculation, the test procedure begins with an estimate of the average burner operating hours that would be required to meet a representative annual heating demand. Generally, the auxiliary run hours would equal burner operating hours if there were no time delays or overruns for the auxiliaries. The test procedure requires measurement or assignment of time delays and overruns. The resulting proportioning of auxiliaries runtime to burner runtime is used to provide an estimate of annual electrical power consumption. For example, if a blower runs 10 percent more than the burner, the annual hours of blower runtime is 1.1 times the burner operating hours. The product of the blower runtime ratio, burner operating hours, and the measured wattage results in an estimate of annual electrical energy consumption for the blower.

A complicating factor is the heating effect provided by the electrical auxiliaries. Explaining further, if some of the heat produced by the electric auxiliaries is deemed useful heat to the house, this heat energy is credited in the burner operating hours calculation as useful heat. In performing such calculation, the test procedure first establishes which auxiliaries provide useful heat. For example, the blower fan on a forced air furnace is credited fully as useful heat. For indoor installed units, induced draft and forced draft fans are partially credited (differently) based on the efficiency of the motor.[9] The partial credit relates to the determination of whether the heat caused by the electric motor inefficiencies contributes to heating a space. For units installed in isolated combustion systems, no useful heat is

[5] Nameplate input is the energy supply rate in Btu's per hour which is physically listed on the tested furnace or boiler. Testing at this input would be the most appropriate and consistent way to specify a uniform test input rate.

[6] Sensible heat loss is the energy loss associated with the elevated temperature (as ''sensed'' by a thermometer) of the exiting flue gases.

[7] Infiltration loss is the energy loss associated with the added leakage a home would experience because of the exiting flue gases.

[8] Each year comprises 8,760 hours—*i.e.,* (365 days/year) × (24 hours/day) = 8,760 hours/year.

[9] An induced draft fan draws air into the combustion chamber. In contrast, a forced draft fan forces air into the combustion chamber.

ascribed to induced draft or forced draft fans. After these determinations and assignments, the test procedure calculates the adjusted burner operating hours that reflect the offset of heating load attributed to the useful heating effect of the electrical auxiliaries.

The annual fuel consumption, ''E_F,'' which is adjusted for electrical heat offset, and annual auxiliary electrical energy consumption, ''E_{AE},'' are then used to calculate annual operating cost. Additionally, E_F and E_{AE} are used in an energy efficiency descriptor, Energy Factor (EF). Energy Factor is the ratio of useful output provided by the fossil fuel to the total site energy consumption.

This characterization of the electric auxiliaries for gas-fired and oil-fired furnaces and boilers is best described in EISA 2007 terminology as ''active mode.'' The accounting done in the existing test procedures only reflects the ''on'' period of the electric auxiliaries. There is no measurement or accounting of the electricity used in standby mode or off mode in the existing test procedures for gas-fired and oil-fired furnaces and boilers. Accordingly, in this notice, DOE is proposing added measurement provisions and expanded calculation procedures to account for electricity used in standby mode and off mode.

D. Electrical Energy Accounting in the Existing Test Procedures for Electric Furnaces and Boilers

The existing test procedure for electric furnaces and boilers requires a measurement of full-load electrical input (E_{in}). This value is then used to calculate annual energy consumption and costs. The efficiency is assumed to be 100 percent for indoor units, because it is assumed all input energy is delivered to the heated space as useful heat. The efficiency for outdoor units is reduced by an assigned or measured jacket loss.

As with fossil-fueled furnaces and boilers, the measurement of E_{in} and the associated accounting is best described in EISA 2007 terminology as ''active mode.'' There is no measurement or accounting of standby mode or off mode in the existing test procedures for electric furnaces and boilers. Accordingly, in this notice, DOE is proposing added measurement provisions and expanded calculation procedures to account for electricity used in standby mode and off mode.

E. Proposed Amendments

Because the current test procedures do not account for electricity consumption in standby mode and off mode, the residential furnace and boiler test procedures require amendment. First, measurements for standby mode and off mode electrical consumption rates (*i.e.,* wattages) are needed. To this end, DOE proposes to add a new subsection to the furnace and boiler test procedure. Specifically, separate measurements of standby mode and off mode wattages would be added to section 8.0, *Test procedure,* of 10 CFR part 430, subpart B, appendix N. These provisions would reference IEC Standard 62301 for the measurement methodology itself. The added section would require only one measurement of wattage if there is no difference between standby mode and off mode. Separate measurements would be required if a difference is expected. Clarification as to the requirement for separate measurements is provided in the discussion in section III.I.

Second, the test procedure needs to specify the method for calculation of the annual standby mode and off mode electric energy consumption from the measured wattages. To this end, DOE proposes to add a new calculation subsection in section 10, *Calculation of derived results from test measurements,* of 10 CFR part 430, subpart B, appendix N. The proposed new subsection would be designated as 10.9, *Average annual electric standby and off mode energy consumption.* This added subsection would determine mode hours consistent with the annual accounting already in the furnace and boiler test procedure (*i.e.,* the 8,760 hours accounting). Specifically, off mode hours would be assigned the current test procedure's value for non-heating season hours (4,600 hours; see ASHRAE 103–1993, section 11.2.12). ''Standby mode hours'' would be defined as the difference between the test procedure's value for heating season hours (4,160 hours, *i.e,* the numerical difference between total hours in a year and non-heating season hours) and the active mode hours. Active mode hours would be estimated as the tested unit's burner operating hours (BOH) for fossil-fueled furnaces and boilers, as discussed in section III.F below. Electric furnaces and boilers do not have a test procedure value for burner operating hours, so a calculated estimate of electric furnace and boiler active mode hours would be provided in this new subsection, as discussed in section III.G below.

Third, because it is technically feasible to do so, the test procedures must integrate the annual standby mode and off mode energy consumption into the existing calculations for annual energy consumption. To this end, DOE proposes to modify the equations in existing section 10.2.3, *Annual auxiliary electrical energy consumption for gas and oil fueled furnaces or boilers,* section 10.3, *Average annual electric energy consumption for electric furnaces and boilers,* 10.5.2 *Average annual auxiliary electrical energy consumption for gas or oil-fueled furnaces and boilers located in a different geographic region of the United States and in buildings with different design heating requirements,* and section 10.5.3, *Average annual electric energy consumption for electric furnaces and boilers located in a different geographic region of the United States and in buildings with different design heating requirements.* The proposed modifications would simply add the calculated annual standby mode and off mode electrical energy consumption to the existing calculations of annual electrical energy consumption. No changes to the current regulating quotient, AFUE, are proposed.

Finally, definitions would be added, as discussed in section III.A above, to clarify the application of these amendments.

An important implication resulting from these proposed modifications is that for fossil-fueled furnaces and boilers, the electrical standby mode and off mode energy consumption would be integrated automatically into the efficiency descriptor Energy Factor. Energy Factor is the ratio of annual fuel output of useful heat delivered to the heated space to the total annual energy consumption of both fossil fuel and electricity. Because annual electrical consumption would be increased due to the inclusion of standby mode and off mode consumption, the Energy Factor numerical value for residential furnaces and boilers will decrease.

F. Proposed Amendments' Relationship With Energy Conservation Standards, and Overall Discussion of Electrical Energy Use in Energy Conservation Standards for Residential Furnaces and Boilers

Section 310 of EISA 2007 requires two distinct activities relative to standby mode and off mode energy use. First, test procedures for all covered products must be amended to incorporate a means for measuring standby mode and off mode energy use, if such means are not already incorporated, by September 30, 2009. Second, any revised or new energy conservation standard adopted after July 1, 2010 must incorporate standby mode and off mode energy use by a single amended or new standard, if feasible; if that is not feasible, the standby mode and off mode energy use

shall be regulated under a separate standard. (42 U.S.C. 6295(gg)(3))

The current energy conservation standard for residential furnaces and boilers is expressed in terms of AFUE, defined in 42 U.S.C. 6291(20) as the efficiency descriptor from the test procedures prescribed in section 6293. The definition of ''efficiency descriptor'' at 42 U.S.C. 6291(22) specifically identifies AFUE as the regulatory metric for furnaces. DOE prescribed an amended AFUE-based standard for furnaces and boilers in 2007. 72 FR 65136 (Nov. 19, 2007). As noted above, AFUE is a specific test procedure efficiency descriptor that does not incorporate any active, standby, or off mode electricity consumption. Since EISA 2007 requires any energy conservation standard adopted after July 1, 2010 to incorporate standby mode and off mode energy use, any future furnace/boiler energy conservation standard adopted after July 1, 2010 based solely on the existing AFUE equation would not satisfy the requirements of EISA 2007.

Therefore, the current rulemaking proposes amendments to the furnace and boiler test procedures that fully address the first EISA 2007 requirement to include standby mode and off mode energy consumption into the test procedures. Specifically, today's notice proposes to add new measurement procedures and to expand the annual energy consumption equations to include electrical standby mode and off mode energy use. (As discussed earlier in section III.B above, the current test procedure and AFUE already incorporate standby and off mode energy consumption applicable to fossil fuel use.) In the proposed amendments, electrical standby mode is defined as the off period during the heating season, and off mode is defined as the entire non-heating season. Taken together, these proposed amendments, when coupled with what is already measured in the existing procedures, would provide a full year's accounting of the energy consumption that section 310 of EISA 2007 requires each test procedure to include.

As mentioned above in III.F, in addition to this energy consumption accounting, one of the energy efficiency descriptors for these products (*i.e.,* Energy Factor) would automatically reflect incorporation of electrical standby mode and off mode energy use without the need for specific amendment. This is because annual electricity consumption, which would be amended to include standby mode and off mode energy consumption and to provide a more comprehensive measurement, is part of the Energy Factor quotient. This increase in the calculated annual electrical consumption would, in turn, reduce slightly the Energy Factor numerical value. Energy Factor, as a stand-alone measurement, is not currently used to set standards for this product.

In addition, EISA 2007 amended 42 U.S.C. 6295(f)(4)(D) to require the Secretary to consider and prescribe furnace energy conservation standards or energy use standards for electricity used for purposes of circulating air through ductwork by December 31, 2013. (42 U.S.C. 6295(f)(4)(D)). DOE notes that there is some ambiguity associated with the language of this statutory provision. This language might appear to some as requiring DOE to prescribe a limited, separate standard that only addresses the active mode electricity used by the circulating fan on furnaces. Interpreting the statutory text in this manner would exclude the electricity energy consumption of boilers and the electricity consumption of furnace auxiliaries other than circulating fans. Although DOE plans to consider the scope of the statutory mandate under 42 U.S.C. 6295(f)(4)(D) in a subsequent standards rulemaking, today's proposed test procedure amendments are expected to be capable of addressing the range of electricity-consuming components for these products. Standard-setting issues, including any necessary additional test procedure modifications subsequently identified, will be fully addressed in that later standards rulemaking.

G. Active Mode Hours Approximated by Burner Operating Hours for Gas-Fueled or Oil-Fueled Furnaces and Boilers

As mentioned above in section III.E, today's proposal would assume that active mode hours of a particular furnace or boiler are equal to its burner operating hours (BOH). BOH is a calculated value in the existing test procedure for residential gas-fueled and oil-fueled furnaces and boilers. 10 CFR Part 430, Subpart B, Appendix N, section 10.2. BOH is determined by a complicated calculation procedure that starts with an estimate of the expected annual heating load and deduces the burner on hours necessary to generate the annual heating load.

BOH is exactly the active mode hours for the burner itself. However, the blower and other electric auxiliaries may have different active mode hours because of intentional time delays and overruns. To some, this might indicate a need to separately account for the standby mode and off mode energy use for each electrical auxiliary. As explained below, although these differences in active mode hours are accounted for in the test procedures, a separate accounting of each auxiliary's standby mode and off mode energy consumption is impracticable. For most furnaces and boilers, a single measured standby electrical wattage cannot be attributed to a particular auxiliary. In other words, since most furnaces and boilers have multiple electrical components, the measured standby mode or off mode wattage cannot easily be parsed out among multiple electrical components even if the exact active mode run hours for each component are known. The most precise approach to address this problem would be to abandon the BOH assumption of active mode for all auxiliaries and measure separately all the possible combinations of auxiliaries in active mode and ascribe different active mode hours and corresponding standby mode hours for each combination. However, such approach would result in a major increase in measurement and calculation complexity.

In addition, a possible slight inaccuracy resulting from the BOH assignment for active mode hours would have an insignificant effect on the overall accounting of standby mode and off mode energy consumption considering the order of magnitude difference between standby mode and off mode hours compared to active mode hours. For example, assuming a representative average BOH of 800 hours, the corresponding standby mode and off mode hours would be 7,960 hours (8,760 − 800)—a one percent error in BOH is a 0.1 percent error in standby mode and off mode accounting. Therefore, considering the impracticability of separate accounting of each auxiliary with no significant improvement in accuracy, DOE maintains that assigning active mode hours for all electrical auxiliaries as burner operating hours is appropriate and reasonable.

H. Active Mode Hours for Electric Furnaces and Boilers

The test procedures for residential electric furnaces and boilers do not have a calculation for burner operating hours. Since there is only one energy source and the efficiency is simply assigned, the current test procedure for electric furnaces and boilers calculates annual energy consumption directly from input energy measurements. Therefore, the option to use the test procedure value of burner operating hours to approximate active mode hours is not applicable. Today's proposal would include a separate calculation to estimate active

mode hours for electric furnaces and boilers. The calculation is simply the quotient of the expected annual heating load (in Btu's) and the measured electrical input (in Btu's/hour). This results in an estimate of active mode hours which is consistent with the EISA 2007 definitions, and, since this calculation is nearly identical to that used for gas-fueled and oil-fueled furnaces and boilers, the resulting estimate is essentially equivalent to BOH for gas-fueled and oil-fueled furnaces and boilers.

I. Measurement of Standby Mode and Off Mode Wattages

Today's proposed amendments allow for a single wattage measurement to serve as both standby mode wattage and off mode wattage. DOE has tentatively concluded that this is a reasonable approach when there is expected to be no difference between the two modes in terms of wattage. This would be the case for most furnace and boiler designs where the appliance is not disconnected from the electric power source or where there is an absence of some other condition that would affect standby mode and off mode wattage. The utilization of a seasonal off switch would be a case where a reduction or elimination of off mode wattage compared to standby mode wattage can be expected. On units so equipped, a separate measurement of off mode wattage would be required, and a zero wattage for off mode would be a distinct possibility. Although DOE is not currently aware of some other factor or condition that might affect a difference between standby mode and off mode, a separate measure of off mode wattage would also be required anytime the wattages are known to differ.

DOE believes the phrases ''reduction or elimination'' and ''seasonal off switch'' are unambiguous and clear enough to direct the testing official as to when a separate measurement of off mode wattage is needed. DOE invites comments on the appropriateness and workability of these provisions.

J. Incorporation by Reference of IEC Standard 62301 (First Edition 2005–06) for Measuring Standby Mode and Off Mode Power Consumption in Furnaces and Boilers

As noted previously, EPCA, as amended by EISA 2007, requires that test procedures ''shall be amended pursuant to section 323 to include standby mode and off mode energy consumption, taking into consideration the most current versions of Standards 62301 and 62087 of the International Electrotechnical Commission. * * *'' (42 U.S.C. 6295(gg)(2)(A)). Today's proposed amendments would reference IEC Standard 62301 in terms of the methodology to obtain the standby mode and off mode measured wattage. The proposed test procedure amendments would use these measured wattages in calculations to accomplish the incorporation of standby mode and off mode energy consumption into the test procedures. DOE reviewed IEC Standard 62301 and sees no need to modify or eliminate any existing IEC provisions. IEC Standard 62301's provisions pertaining to supply voltage waveform and power measurement accuracy apply to any measurement of low electrical power, including the low power measurement expected during furnace and boiler standby mode and off mode operation. The IEC Standard 62301 is concise and well organized and should not pose a significant burden to the furnace and boiler manufacturers or the associated testing industry.

DOE also reviewed IEC Standard 62087, which specifies methods of measurement for the power consumption of television receivers, video cassette recorders, set top boxes, audio equipment, and multi-function equipment for consumer use. IEC Standard 62087 does not, however, include measurement for the power consumption of appliances such as furnaces. Therefore, DOE determined that IEC Standard 62087 was not applicable to this rulemaking.

Finally, DOE recognizes that the IEC is currently developing an updated test procedure, IEC Standard 62301 (Ed. 2.0), which would include definitions of ''off mode,'' ''network connected standby mode,'' and ''disconnected mode,'' and which would also revise the current IEC Standard 62301 definition of ''standby mode.'' Given the definitions proposed in this NOPR which are tailored to address furnaces and boilers, DOE does not believe that these IEC modifications would likely impact or improve the amendments proposed here, because the measurement provisions of IEC Standard 62301, which are needed to implement EISA 2007 for furnaces and boilers, are not expected to change appreciably. Therefore, DOE does not plan to wait for such amendments, particularly given the upcoming statutory deadline. Thus, DOE plans to use the current version of IEC Standard 62301 in today's proposed test procedure. After the final rule is published, further amendments to the referenced IEC standard by the standard-setting organization would become part of the DOE test procedure only if DOE subsequently amends the test procedure to incorporate them through a separate rulemaking.

K. Compliance With Other EPCA Requirements

EPCA requires that ''[a]ny test procedures prescribed or amended under this section shall be reasonably designed to produce test results which measure energy efficiency, energy use * * * or estimated annual operating cost of a covered product during a representative average use cycle or period of use * * * and shall not be unduly burdensome to conduct.'' (42 U.S.C. 6293(b)(3)). For the reasons that follow, DOE believes that the incorporation of IEC Standard 62301, along with the modifications and additional calculations described above, would satisfy this requirement.

Today's proposed amendments to the DOE test procedure would incorporate a test standard that is widely accepted and used internationally to measure electric power in standby mode and off mode. Based on its analysis of IEC Standard 62301, DOE determined that the test methods and equipment that the amendment would require for measuring standby power do not differ substantially from the test methods and equipment in the current DOE test procedure for furnaces and boilers. Therefore, testing of furnaces and boilers pursuant to today's proposed amendments would not require any significant investment in test facilities or new equipment. In addition, the 8,760-hour accounting described above constitutes a full accounting of the annual energy consumption for furnaces and boilers. For these reasons, DOE has concluded that the amended test procedure would produce test results that yield energy consumption values of a covered product during a representative period of use, and that the test procedure would not be unduly burdensome to conduct.

IV. Procedural Requirements

A. Review Under Executive Order 12866

Today's regulatory action is not a ''significant regulatory action'' under section 3(f) of Executive Order 12866, Regulatory Planning and Review, 58 FR 51735 (Oct. 4, 1993). Accordingly, this proposed action was not subject to review under the Executive Order by the Office of Information and Regulatory Affairs (OIRA) in the Office of Management and Budget (OMB).

B. Review Under the Regulatory Flexibility Act

The Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*) requires preparation

of an initial regulatory flexibility analysis for any rule that by law must be proposed for public comment, unless the agency certifies that the rule, if promulgated, will not have a significant economic impact on a substantial number of small entities. As required by Executive Order 13272, ''Proper Consideration of Small Entities in Agency Rulemaking,'' 67 FR 53461 (August 16, 2002), DOE published procedures and policies on February 19, 2003, to ensure that the potential impacts of its rules on small entities are properly considered during the rulemaking process. 68 FR 7990. DOE's procedures and policies may be viewed on the Office of the General Counsel's Web site (*http://www.gc.doe.gov*).

DOE reviewed today's proposed rule under the provisions of the Regulatory Flexibility Act and the procedures and policies published on February 19, 2003. This proposed rule prescribes amendments to test procedures that will be used to test compliance with energy conservation standards for the products that are the subject of this rulemaking. The proposed rule affects residential furnace and boiler test procedures.

DOE has tentatively concluded that the proposed rule would not have a significant economic impact on a substantial number of small entities under the provisions of the Regulatory Flexibility Act. The proposed rule would amend DOE's test procedures by incorporating testing provisions to address standby mode and off mode energy consumption. The only possible impact is the added cost to conduct the measurements required in the IEC Standard 62301. As discussed in section III.K above, this would not represent a substantial burden to any manufacturer of furnaces and boilers, small or large.

In addition, the Small Business Administration (SBA) considers an entity to be a small business if, together with its affiliates, it employs fewer than a threshold number of workers specified in 13 CFR part 121, which relies on size standards and codes established by the North American Industry Classification System (NAICS). The threshold number for NAICS classification for 333415, which applies to Air-Conditioning and Warm Air Heating Equipment and Commercial and Industrial Refrigeration Equipment Manufacturing (including residential furnaces and boilers manufacturers) is 750 employees.[10] DOE reviewed the Air-Conditioning, Heating, and Refrigeration Institute's Directory of Certified Product Performance for Residential Furnaces and Boilers (2009),[11] the ENERGY STAR Product Databases for Gas and Oil Furnaces (May 15, 2009),[12] the California Energy Commission's Appliance Database for Residential Furnaces and Boilers,[13] and the Consortium for Energy Efficiency's Qualifying Furnace and Boiler List (April 2, 2009).[14] From this review, DOE found there were approximately 25 small businesses within the furnace and boiler industry. Even though there are a significant number of small businesses within the furnace and boiler industry, DOE does not believe the test procedure amendments described in this proposed rule would represent a substantial burden to any manufacturer, including small manufacturers, as explained above. DOE requests comments on its characterization of the residential furnace and boiler industry in terms of the number of and impacts on small businesses.

For these reasons, DOE certifies that the proposed rule, if adopted, would not have a significant economic impact on a substantial number of small entities. Accordingly, DOE has not prepared a regulatory flexibility analysis for this rulemaking. DOE will transmit the certification and supporting statement of factual basis to the Chief Counsel for Advocacy of the SBA for review under 5 U.S.C. 605(b).

C. Review Under the Paperwork Reduction Act of 1995

This rulemaking will impose no new information collection or recordkeeping requirements. Accordingly, OMB clearance is not required under the Paperwork Reduction Act. (44 U.S.C. 3501 *et seq.*)

D. Review Under the National Environmental Policy Act of 1969

In this proposed rule, DOE proposes test procedure amendments that it expects will be used to develop and implement future energy conservation standards for residential furnaces and boilers. DOE has determined that this rule falls into a class of actions that are categorically excluded from review under the National Environmental Policy Act of 1969 (42 U.S.C. 4321 *et seq.*) and DOE's implementing regulations at 10 CFR part 1021. Specifically, this rule amends an existing rule without changing its environmental effect, and, therefore, is covered by the Categorical Exclusion in 10 CFR part 1021, subpart D, appendix A, paragraph A5. Today's proposed rule would not affect the amount, quality, or distribution of energy usage, and, therefore, would not result in any environmental impacts.[15] Accordingly, neither an environmental assessment nor an environmental impact statement is required.

E. Review Under Executive Order 13132

Executive Order 13132, ''Federalism,'' imposes certain requirements on agencies formulating and implementing policies or regulations that preempt State law or that have Federalism implications. 64 FR 43255 (August 4, 1999). The Executive Order requires agencies to examine the constitutional and statutory authority supporting any action that would limit the policymaking discretion of the States, and to carefully assess the necessity for such actions. The Executive Order also requires agencies to have an accountable process to ensure meaningful and timely input by State and local officials in the development of regulatory policies that have Federalism implications. On March 14, 2000, DOE published a statement of policy describing the intergovernmental consultation process that it will follow in developing such regulations. 65 FR 13735. DOE examined this proposed rule and determined that it would not preempt State law and would not have a substantial direct effect on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government. Therefore, no further action is required to comply with Executive Order 13132.

F. Review Under Executive Order 12988

Regarding the review of existing regulations and the promulgation of new regulations, section 3(a) of Executive Order 12988, ''Civil Justice Reform,'' 61 FR 4729 (Feb. 7, 1996), imposes on Federal agencies the general

[10] U.S. Small Business Administration, Table of Small Business Size Standards, August 22, 2008: *http://www.sba.gov/idc/groups/public/documents/sba_homepage/serv_sstd_tablepdf.pdf.*

[11] The Air-Conditioning, Heating, and Refrigeration Institute, Directory of Certified Product Performance, June 2009: *http://www.ahridirectory.org/ahridirectory/pages/home.aspx.*

[12] The U.S. Environmental Protection Agency and the U.S. Department of Energy, ENERGY STAR Furnaces—Product Databases for Gas and Oil Furnaces, May 15, 2009: *http://www.energystar.gov/index.cfm?c=furnaces.pr_furnaces.*

[13] The California Energy Commission, Appliance Database for Residential Furnaces and Boilers, 2009: *http://www.appliances.energy.ca.gov/QuickSearch.aspx.*

[14] Consortium of Energy Efficiency, Qualifying Furnace and Boiler List, April 2, 2009: *http://www.ceedirectory.org/ceedirectory/pages/cee/ceeDirectoryInfo.aspx.*

[15] Categorical Exclusion A5 provides: ''Rulemaking interpreting or amending an existing rule or regulation that does not change the environmental effect of the rule or regulation being amended.''

duty to adhere to the following requirements: (1) Eliminate drafting errors and ambiguity; (2) write regulations to minimize litigation; (3) provide a clear legal standard for affected conduct rather than a general standard; and (4) promote simplification and burden reduction. Section 3(b) of Executive Order 12988 specifically requires that Executive agencies make every reasonable effort to ensure that the regulation specifies the following: (1) The preemptive effect, if any; (2) any effect on existing Federal law or regulation; (3) a clear legal standard for affected conduct while promoting simplification and burden reduction; (4) the retroactive effect, if any; (5) definitions of key terms; and (6) other important issues affecting clarity and general draftsmanship under any guidelines issued by the Attorney General. Section 3(c) of Executive Order 12988 requires Executive agencies to review regulations in light of applicable standards in sections 3(a) and 3(b) to determine whether they are met or whether it is unreasonable to meet one or more of them. DOE has completed the required review and determined that, to the extent permitted by law, this proposed rule meets the relevant standards of Executive Order 12988.

G. Review Under the Unfunded Mandates Reform Act of 1995

Title II of the Unfunded Mandates Reform Act of 1995 (UMRA) (Pub. L. 104–4; 2 U.S.C. 1501 *et seq.*) requires each Federal agency to assess the effects of Federal regulatory actions on State, local, and Tribal governments and the private sector. For a proposed regulatory action likely to result in a rule that may cause the expenditure by State, local, and Tribal governments, in the aggregate, or by the private sector of $100 million or more in any one year (adjusted annually for inflation), section 202 of UMRA requires a Federal agency to publish estimates of the resulting costs, benefits, and other effects on the national economy. (2 U.S.C. 1532(a), (b)) UMRA also requires a Federal agency to develop an effective process to permit timely input by elected officers of State, local, and Tribal governments on a proposed ''significant intergovernmental mandate,'' and requires an agency plan for giving notice and opportunity for timely input to potentially affected small governments before establishing any requirements that might significantly or uniquely affect such governments. On March 18, 1997, DOE published a statement of policy on its process for intergovernmental consultation under UMRA. 62 FR 12820. (The policy is also available at *http://www.gc.doe.gov*). Today's proposed rule contains neither an intergovernmental mandate nor a mandate that may result in an expenditure of $100 million or more in any year, so no further action is required under UMRA.

H. Review Under the Treasury and General Government Appropriations Act, 1999

Section 654 of the Treasury and General Government Appropriations Act, 1999 (Pub. L. 105–277) requires Federal agencies to issue a Family Policymaking Assessment for any rule that may affect family well-being. Today's proposed rule would have no impact on the autonomy or integrity of the family as an institution. Accordingly, DOE has concluded that it is not necessary to prepare a Family Policymaking Assessment.

I. Review Under Executive Order 12630

DOE has determined, under Executive Order 12630, ''Governmental Actions and Interference with Constitutionally Protected Property Rights,'' 53 FR 8859 (March 18, 1988), that this regulation would not result in any takings that might require compensation under the Fifth Amendment to the U.S. Constitution.

J. Review Under the Treasury and General Government Appropriations Act, 2001

Section 515 of the Treasury and General Government Appropriations Act, 2001 (44 U.S.C. 3516 note) provides for agencies to review most disseminations of information to the public under guidelines established by each agency pursuant to general guidelines issued by OMB. OMB's guidelines were published at 67 FR 8452 (Feb. 22, 2002), and DOE's guidelines were published at 67 FR 62446 (Oct. 7, 2002). DOE has reviewed today's notice and concluded that it is consistent with applicable policies in the OMB and DOE guidelines.

K. Review Under Executive Order 13211

Executive Order 13211, ''Actions Concerning Regulations That Significantly Affect Energy Supply, Distribution, or Use,'' 66 FR 28355 (May 22, 2001), requires Federal agencies to prepare and submit to OIRA a Statement of Energy Effects for any proposed significant energy action. The definition of a ''significant energy action'' is any action by an agency that promulgates or is expected to lead to promulgation of a final rule, and that: (1) Is a significant regulatory action under Executive Order 12866, or any successor order; and (2) is likely to have a significant adverse effect on the supply, distribution, or use of energy; or (3) is designated by the Administrator of OIRA as a significant energy action. For any proposed significant energy action, the agency must give a detailed statement of any adverse effects on energy supply, distribution, or use if the proposal is implemented, and of reasonable alternatives to the action and their expected benefits on energy supply, distribution, and use. Today's regulatory action is not a significant regulatory action under Executive Order 12866. Moreover, it would not have a significant adverse effect on the supply, distribution, or use of energy. It has likewise not been designated as a significant energy action by the Administrator of OIRA. Therefore, it is not a significant energy action. Accordingly, DOE has not prepared a Statement of Energy Effects.

L. Review Under Section 32 of the Federal Energy Administration Act of 1974

Under section 301 of the DOE Organization Act (Pub. L. 95–91; 42 U.S.C. 7101 *et seq.*), DOE must comply with section 32 of the Federal Energy Administration Act of 1974, as amended by the Federal Energy Administration Authorization Act of 1977 (FEAA) (15 U.S.C. 788). Section 32 essentially provides that, where a proposed rule authorizes or requires use of commercial standards, the rulemaking must inform the public of the use and background of such standards. In addition, section 32(c) requires DOE to consult with the Attorney General and the Chairman of the Federal Trade Commission (FTC) concerning the impact of the commercial or industry standards on competition.

The proposed rule would modify the test procedure for residential furnaces and boilers by incorporating testing methods contained in the commercial standard, IEC Standard 62301. DOE has evaluated this standard and is unable to conclude whether it fully complies with the requirements of section 32(b) of the FEAA (*i.e.,* whether it was developed in a manner that fully provides for public participation, comment, and review). DOE will consult with the Attorney General and the Chairman of the FTC about the impact on competition of using the methods contained in this standard before prescribing a final rule.

V. Public Participation

A. Attendance at Public Meeting

The time, date, and location of the public meeting are listed in the **DATES**

and **ADDRESSES** sections at the beginning of this NOPR. To attend the public meeting, please notify Ms. Brenda Edwards at (202) 586–2945. As explained in the **ADDRESSES** section, foreign nationals visiting DOE Headquarters are subject to advance security screening procedures.

B. Procedure for Submitting Requests to Speak

Anyone who has an interest in today's notice, or who represents a group or class of persons with an interest in these issues, may request an opportunity to make an oral presentation at the public meeting. Such persons may hand-deliver requests to speak to the address shown in the **ADDRESSES** section at the beginning of this notice between 9 a.m. and 4 p.m., Monday through Friday, except Federal holidays. Requests may also be sent by mail or e-mail to: Ms. Brenda Edwards, U.S. Department of Energy, Building Technologies Program, Mailstop EE–2J, 1000 Independence Avenue, SW., Washington, DC 20585–0121, or *Brenda.Edwards@ee.doe.gov*. Persons who wish to speak should include in their request a computer diskette or CD in WordPerfect, Microsoft Word, PDF, or text (ASCII) file format that briefly describes the nature of their interest in this rulemaking and the topics they wish to discuss. Such persons should also provide a daytime telephone number where they can be reached.

DOE requests persons scheduled to make an oral presentation to submit an advance copy of their statements at least one week before the public meeting. DOE may permit persons who cannot supply an advance copy of their statement to participate, if those persons have made advance alternative arrangements with the Building Technologies Program. Requests to give an oral presentation should ask for such alternative arrangements.

C. Conduct of Public Meeting

DOE will designate a DOE official to preside at the public meeting and may also use a professional facilitator to aid discussion. The meeting will not be a judicial or evidentiary-type public hearing, but DOE will conduct it in accordance with 5 U.S.C. 553 and section 336 of EPCA (42 U.S.C. 6306). A court reporter will be present to record the proceedings and prepare a transcript. DOE reserves the right to schedule the order of presentations and to establish the procedures governing the conduct of the public meeting. After the public meeting, interested parties may submit further comments on the proceedings as well as on any aspect of the rulemaking until the end of the comment period.

DOE will conduct the public meeting in an informal conference style. DOE will present summaries of comments received before the public meeting, allow time for presentations by participants, and encourage all interested parties to share their views on issues affecting this rulemaking. Each participant will be allowed to make a prepared general statement (within time limits determined by DOE), before the discussion of specific topics. DOE will permit other participants to comment briefly on any general statements. At the end of all prepared statements on each specific topic, DOE will permit participants to clarify their statements briefly and to comment on statements made by others.

Participants should be prepared to answer DOE's and other participants' questions. DOE representatives may also ask participants about other matters relevant to this rulemaking. The official conducting the public meeting will accept additional comments or questions from those attending, if time permits. The presiding official will announce any further procedural rules or modification of the above procedures that may be needed for the proper conduct of the public meeting.

DOE will make the entire record of this proposed rulemaking, including the transcript from the public meeting, available for inspection at the U.S. Department of Energy, 950 L'Enfant Plaza SW., Suite 600, Washington, DC 20024, (202) 586–9127, between 9 a.m. and 4 p.m., Monday through Friday, except Federal holidays. Copies of the transcript are available for purchase from the transcribing reporter.

D. Submission of Comments

DOE will accept comments, data, and information regarding the proposed rule before or after the public meeting, but no later than the date provided at the beginning of this notice. Comments, data, and information submitted to DOE's e-mail address for this rulemaking should be provided in WordPerfect, Microsoft Word, PDF, or text (ASCII) file format. Stakeholders should avoid the use of special characters or any form of encryption, and wherever possible comments should include the electronic signature of the author. Comments, data, and information submitted to DOE via mail or hand delivery/courier should include one signed paper original. No telefacsimiles (faxes) will be accepted.

Pursuant to 10 CFR 1004.11, any person submitting information that he or she believes to be confidential and exempt by law from public disclosure should submit two copies: one copy of the document that includes all of the information believed to be confidential, and one copy of the document with that information deleted. DOE will determine the confidential status of the information and treat it accordingly.

Factors of interest to DOE when evaluating requests to treat submitted information as confidential include the following: (1) A description of the items; (2) whether and why such items are customarily treated as confidential within the industry; (3) whether the information is generally known by or available from other sources; (4) whether the information was previously made available to others without obligation concerning its confidentiality; (5) an explanation of the competitive injury to the submitting person that would result from public disclosure; (6) when such information might lose its confidential character due to the passage of time; and (7) why disclosure of the information would be contrary to the public interest.

E. Issues on Which DOE Seeks Comment

DOE is particularly interested in receiving comments and views of interested parties on the following issues:

1. Incorporation of IEC Standard 62301

DOE invites comments on the adequacy and appropriateness of IEC Standard 62301 in general, and whether there is a need to modify or depart from the provisions in the IEC Standard 62301 with regard to residential furnaces and boilers.

2. Measurement of Standby Mode and Off Mode Wattages

To avoid unnecessary measurement burden, today's proposed amendments allow a single measurement to serve as both standby mode and off mode wattages. DOE invites comments on the appropriateness and workability of these provisions.

3. Proposed Amendments' Relationship With Energy Conservation Standards for Residential Furnaces and Boilers

DOE believes today's proposed residential furnace and boiler test procedure amendments are sufficient to allow for implementation of EISA 2007-related energy conservation standards requirements for residential furnaces and boilers (*e.g.,* the added provisions will allow a subsequent standard to address standby mode and off mode energy consumption). DOE invites comment on the overall issue of the test procedure's ability to measure

electricity use (active mode as well as standby mode and off mode) in the context of residential furnace and boiler efficiency standards.

VI. Approval of the Office of the Secretary

The Secretary of Energy has approved publication of this notice of proposed rulemaking.

List of Subjects in 10 CFR Part 430

Administrative practice and procedure, Confidential business information, Energy conservation, Household appliances, Imports, Incorporation by reference, Intergovernmental relations, Small businesses.

Issued in Washington, DC, on July 9, 2009.

Cathy Zoi,

Assistant Secretary, Energy Efficiency and Renewable Energy.

For the reasons stated in the preamble, DOE proposes to amend part 430 of chapter II of title 10 of the Code of Federal Regulations, to read as set forth below:

PART 430—ENERGY CONSERVATION PROGRAM FOR CONSUMER PRODUCTS

1. The authority citation for part 430 continues to read as follows:

Authority: 42 U.S.C. 6291–6309; 28 U.S.C. 2461 note.

2. Section 430.3 is amended by adding paragraph (k)(3) to read as follows:

§ 430.3 Materials incorporated by reference.

* * * * *

(k) * * *

(3) IEC 62301, ''Household electrical appliances—Measurement of standby power,'' (First Edition 2005–06).

* * * * *

3. Appendix N to subpart B of part 430 is amended as follows:

a. Adding new introductory text.

b. In section 2.0 *Definitions,* by adding new sections 2.5, 2.6, 2.7, 2.8, and 2.9.

c. In section 8.0 *Test procedure,* by adding new section 8.6.

d. In section 9.0 *Nomenclature,* by adding three new text items at the end of the section.

e. In section 10.0 *Calculation of derived results from test measurements,* by:

1. Revising sections 10.2.3, 10.2.3.1, 10.2.3.2, 10.3, 10.5.2, 10.5.3; and

2. Adding new section 10.9.

The additions and revisions read as follows:

Appendix N to Subpart B of Part 430—Uniform Test Method for Measuring the Energy Consumption of Furnaces and Boilers

The procedures and calculations in sections 8.6 and 10.9 of this appendix N need not be performed to determine compliance with energy conservation standards for furnaces and boilers.

* * * * *

2.0. Definitions.

* * * * *

2.5 *IEC 62301* means the test standard published by the International Electrotechnical Commission (IEC), titled ''Household electrical appliances—Measurement of standby power,'' Publication 62301 (First Edition 2005–06). (Incorporated by reference, see § 430.3.)

2.6. *Active mode* means the condition during the heating season in which the furnace or boiler is connected to the power source, and either the burner, electric resistance elements, or any electrical auxiliaries such as blowers or pumps, are activated.

2.7 *Standby mode* means the condition during the heating season in which the furnace or boiler is connected to the power source, and neither the burner, electric resistance elements, nor any electrical auxiliaries such as blowers or pumps, are activated.

2.8 *Off mode* means the condition during the non-heating season in which the furnace or boiler is connected to the power source, and neither the burner, electric resistance elements, nor any electrical auxiliaries such as blowers or pumps, are activated.

2.9 *Seasonal off switch* means the switch on the furnace or boiler that, when activated, results in a measurable change in energy consumption between the standby and off modes.

* * * * *

8.0 Test Procedure.

* * * * *

8.6 *Measurement of electrical standby and off mode power.*

8.6.1 *Standby power.* With all electrical components of the furnace or boiler not activated, measure the standby power (P_{SB}) in accordance with the procedures in IEC 62301 (incorporated by reference, see § 430.3). Utilize the accuracy and precision specifications in IEC Standard 62301 in lieu of those in ASHRAE Standard 103–1993. Measure the wattage so that all possible standby mode wattage for the entire appliance is recorded, not just the standby mode wattage of a single auxiliary.

8.6.2 *Off mode power.* If the unit is equipped with a seasonal off switch or there is an expected difference between off mode power and standby mode power, measure off mode power (P_{OFF}) in accordance with the standby power procedures in IEC 62301 (incorporated by reference, see § 430.3). Utilize the accuracy and precision specifications in IEC Standard 62301 in lieu of those in ASHRAE Standard 103–1993. Measure the wattage so that all possible off mode wattage for the entire appliance is recorded, not just the off mode wattage of a single auxiliary. If there is no expected difference in off mode power and standby power, let $P_{OFF} = P_{SB}$, in which case no separate measurement of off mode power is necessary.

9.0. Nomenclature.

* * * * *

E_{SO} = Average annual electric standby and off mode energy consumption, in kilowatt-hours

P_{OFF} = Furnace or boiler off mode power, in watts

P_{SB} = Furnace or boiler standby mode power, in watts

10.0 Calculation of derived results from test measurements.

* * * * *

10.2.3 *Average annual auxiliary electrical energy consumption for gas or oil-fueled furnaces or boilers.* For furnaces and boilers equipped with single stage controls the average annual auxiliary electrical consumption (E_{AE}) is expressed in kilowatt-hours and defined as:

$$E_{AE} = BOH_{SS}(y_P PE + y_{IG} PE_{IG} + yBE) + E_{SO}$$

Where:

BOH_{SS} = as defined in 10.2.1 of this appendix
PE = as defined in 10.2.1 of this appendix
y_P = as defined in 10.2.1 of this appendix
y_{IG} = as defined in 10.2.1 of this appendix
PE_{IG} = as defined in 10.2.1 of this appendix
y = as defined in 10.2.1 of this appendix
BE = as defined in 10.2.1 of this appendix
E_{SO} = as defined in 10.9 of this appendix

10.2.3.1 For furnaces or boilers equipped with two stage controls, E_{AE} is defined as:

$$E_{AE} = BOH_R(y_P PE_R + y_{IG} PE_{IG} + yBE_R) + BOH_H(y_P PE_H + y_{IG} PE_{IG} + y\,BE_H) + E_{SO}$$

Where:

BOH_R = as defined in 10.2.1.2 of this appendix
y_P = as defined in 10.2.1 of this appendix
PE_R = as defined in 9.1.2.2 and measured at the reduced fuel input rate, of ANSI/ASHRAE Standard 103–1993
y_{IG} = as defined in 10.2.1 of this appendix
PE_{IG} = as defined in 10.2.1 of this appendix
y = as defined in 10.2.1 of this appendix
BE_R = as defined in 9.1.2.2 of ANSI/ASHRAE Standard 103–1993, measured at the reduced fuel input rate
BOH_H = as defined in 10.2.1.3 of this appendix
PE_H = as defined in 9.1.2.2 of ANSI/ASHRAE Standard 103–1993, measured at the maximum fuel input rate
BE_H = as defined in 9.1.2.2 of ANSI/ASHRAE Standard 103–1993, measured at the maximum fuel input rate
E_{SO} = as defined in 10.9 of this appendix

10.2.3.2 For furnaces or boilers equipped with step modulating controls, E_{AE} is defined as:

$$E_{AE} = BOH_R(y_P\, PE_R + y_{IG} PE_{IG} + yBE_R) + BOH_M(y_P PE_H + y_{IG} PE_{IG} + y\,BE_H) + E_{SO}$$

Where:

BOH_R = as defined in 10.2.1.2 of this appendix
y_P = as defined in 10.2.1 of this appendix
PE_R = as defined in 9.1.2.2 of ANSI/ASHRAE Standard 103–1993, measured at the reduced fuel input rate
y_{IG} = as defined in 10.2.1 of this appendix

PE_{IG} = as defined in 10.2.1 of this appendix
y = as defined in 10.2.1 of this appendix
BE_R = as defined in 9.1.2.2 of ANSI/ASHRAE Standard 103–1993, measured at the reduced fuel input rate
BOH_M = as defined in 10.2.1.4 of this appendix
PE_H = as defined in 9.1.2.2 of ANSI/ASHRAE Standard 103–1993, measured at the maximum fuel input rate
BE_H = as defined in 9.1.2.2 of ANSI/ASHRAE Standard 103–1993, measured at the maximum fuel inputs rate
E_{SO} = as defined in 10.9 of this appendix

10.3 Average annual electric energy consumption for electric furnaces or boilers.

$E_E = 100(2{,}080)(0.77)DHR/(3.412\ AFUE) + E_{SO}$

Where:

100= to express a percent as a decimal
2,080 = as specified in 10.2.1 of this appendix
0.77 = as specified in 10.2.1 of this appendix
DHR = as defined in 10.2.1 of this appendix
3.412 = conversion to express energy in terms of watt-hours instead of Btu
AFUE = as defined in 11.1 of ANSI/ASHRAE Standard 103–1993, in percent, and calculated on the basis of: ICS installation, for non-weatherized warm air furnaces; indoor installation, for non-weatherized boilers; or outdoor installation, for furnaces and boilers that are weatherized
E_{SO} = as defined in 10.9 of this appendix

* * * * *

10.5.2 Average annual auxiliary electrical energy consumption for gas or oil-fueled furnaces and boilers located in a different geographic region of the United States and in buildings with different design heating requirements. For gas or oil-fueled furnaces and boilers, the average annual auxiliary electrical energy consumption for a specific geographic region and a specific typical design heating requirement (E_{AER}) is expressed in kilowatt-hours and defined as:

$E_{AER} = (E_{AE} - E_{SO})\ (HLH/2080) + E_{SOR}$

Where:

E_{AE} = as defined in 10.2.3 of this appendix
E_{SO} = as defined in 10.9 of this appendix
HLH = as defined in 10.5.1 of this appendix
2,080 = as specified in 10.2.1 of this appendix
E_{SOR} = as specified in 10.5.3 of this appendix

10.5.3 Average annual electric energy consumption for electric furnaces and boilers located in a different geographic region of the United States and in buildings with different design heating requirements. For electric furnaces and boilers, the average annual electric energy consumption for a specific geographic region and a specific typical design heating requirement (E_{ER}) is expressed in kilowatt-hours and defined as:

$E_{ER} = 100(0.77)\ DHR\ HLH/(3.412\ AFUE) + E_{SOR}$

Where:

100 = as specified in 10.3 of this appendix
0.77 = as specified in 10.2.1 of this appendix
DHR = as defined in 10.2.1 of this appendix
HLH = as defined in 10.5.1 of this appendix
3.412 = as specified in 10.3 of this appendix
AFUE = as defined in 10.3 of this appendix
E_{SOR} = E_{SO} as defined in 10.9 of this appendix, except that in the equation for E_{SO} the term BOH is multiplied by the expression (HLH/2080) to get the appropriate regional accounting of standby mode and off mode loss

* * * * *

10.9 Average annual electrical standby and off mode energy consumption. Calculate the annual electrical standby mode and off mode energy consumption (E_{SO}) in kilowatt-hours, defined as:

$E_{SO} = ((P_{SB} * (4{,}160 - BOH)) + (P_{OFF} * 4{,}600)) * K$

Where:

P_{SB} = furnace or boiler standby mode power, in watts, as measured in Section 8.6
4,160 = average heating season hours per year
P_{OFF} = furnace or boiler off mode power, in watts, as measured in Section 8.6
4,600 = average non-heating season hours per year
K = 0.001 kWh/Wh, conversion factor for watt-hours to kilowatt-hours
BOH = total burner operating hours as calculated in section 10.2 for gas or oil-furled furnaces or boilers. Where for gas or oil-fueled furnaces and boilers equipped with single-stage controls BOH = BOH_{SS}, for gas or oil-fueled furnaces and boilers equipped with two-stage controls BOH = (BOH_R + BOH_H) and for gas or oil-fueled furnaces and boilers equipped with step-modulating controls BOH = (BOH_R + BOH_M). For electric furnaces and boilers, BOH = $100(2{,}080)(0.77)DHR/(E_{in}\ 3.412)(AFUE)$

Where:

100 = to express a percent as a decimal
2,080 = as specified in 10.2.1 of this appendix
0.77 = as specified in 10.2.1 of this appendix
DHR = as defined in 10.2.1 of this appendix
3.412 = conversion to express energy in terms of KBtu instead of kilowatt-hours
AFUE = as defined in 11.1 of ANSI/ASHRAE Standard 103–1993, (incorporated by reference, see § 430.3) in percent
E_{in} = Steady state electric rated power, in kilowatts, from section 9.3 of ANSI/ASHRAE Standard 103–1993

[FR Doc. E9–17555 Filed 7–24–09; 8:45 am]
BILLING CODE 6450–01–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 71

[Docket No. FAA–2009–0512; Airspace Docket No. 09–AGL–9]

Proposed Amendment of Class E Airspace; Platteville, WI

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Notice of proposed rulemaking (NPRM).

SUMMARY: This action proposes to amend Class E airspace at Platteville, WI. Additional controlled airspace is necessary to accommodate new Standard Instrument Approach Procedures (SIAPs) at Platteville Municipal Airport, Platteville, WI. This action would also reflect the name change of the airport from Grant County Airport and update the geographic coordinates to coincide with the FAAs National Aeronautical Charting Office. The FAA is taking this action to enhance the safety and management of Instrument Flight Rules (IFR) operations for SIAPs at Platteville Municipal Airport.

DATES: 0901 UTC. Comments must be received on or before September 10, 2009.

ADDRESSES: Send comments on this proposal to the U.S. Department of Transportation, Docket Operations, 1200 New Jersey Avenue, SE., West Building Ground Floor, Room W12–140, Washington, DC 20590–0001. You must identify the docket number FAA–2009–0512/Airspace Docket No. 09–AGL–9, at the beginning of your comments. You may also submit comments through the Internet at *http://www.regulations.gov*. You may review the public docket containing the proposal, any comments received, and any final disposition in person in the Dockets Office between 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays. The Docket Office (telephone 1–800–647–5527), is on the ground floor of the building at the above address.

FOR FURTHER INFORMATION CONTACT: Scott Enander, Central Service Center, Operations Support Group, Federal Aviation Administration, Southwest Region, 2601 Meacham Blvd, Fort Worth, TX 76137; telephone: (817) 321–7716.

SUPPLEMENTARY INFORMATION:

Comments Invited

Interested parties are invited to participate in this proposed rulemaking by submitting such written data, views, or arguments, as they may desire. Comments that provide the factual basis supporting the views and suggestions presented are particularly helpful in developing reasoned regulatory decisions on the proposal. Comments are specifically invited on the overall regulatory, aeronautical, economic, environmental, and energy-related aspects of the proposal. Communications should identify both docket numbers and be submitted in triplicate to the address listed above. Commenters wishing the FAA to acknowledge receipt of their comments

on this notice must submit with those comments a self-addressed, stamped postcard on which the following statement is made: ''Comments to Docket No. FAA–2009–0512/Airspace Docket No. 09–AGL–9.'' The postcard will be date/time stamped and returned to the commenter.

Availability of NPRM's

An electronic copy of this document may be downloaded through the Internet at *http://www.regulations.gov*. Recently published rulemaking documents can also be accessed through the FAA's Web page at *http://www.faa.gov/airports_airtraffic/air_traffic/publications/airspace_amendments/*.

Additionally, any person may obtain a copy of this notice by submitting a request to the Federal Aviation Administration (FAA), Office of Air Traffic Airspace Management, ATA–400, 800 Independence Avenue, SW., Washington, DC 20591, or by calling (202) 267–8783. Communications must identify both docket numbers for this notice. Persons interested in being placed on a mailing list for future NPRM's should contact the FAA's Office of Rulemaking (202) 267–9677, to request a copy of Advisory Circular No. 11–2A, Notice of Proposed Rulemaking Distribution System, which describes the application procedure.

The Proposal

This action proposes to amend Title 14, Code of Federal Regulations (14 CFR), part 71 by adding additional Class E airspace extending upward from 700 feet above the surface for SIAPs operations at Platteville Municipal Airport, Platteville, WI. This action would also reflect the name change of the airport from Grant County Airport to Platteville Municipal Airport and update the geographic coordinates of the airport. Controlled airspace is needed for the safety and management of IFR operations at the airport.

Class E airspace areas are published in Paragraph 6005 of FAA Order 7400.9S, dated October 3, 2008, and effective October 31, 2008, which is incorporated by reference in 14 CFR 71.1. The Class E airspace designation listed in this document would be published subsequently in the Order.

The FAA has determined that this proposed regulation only involves an established body of technical regulations for which frequent and routine amendments are necessary to keep them operationally current. It, therefore, (1) is not a ''significant regulatory action'' under Executive Order 12866; (2) is not a ''significant rule'' under DOT Regulatory Policies and Procedures (44 FR 11034; February 26, 1979); and (3) does not warrant preparation of a Regulatory Evaluation as the anticipated impact is so minimal. Since this is a routine matter that will only affect air traffic procedures and air navigation, it is certified that this rule, when promulgated, will not have a significant economic impact on a substantial number of small entities under the criteria of the Regulatory Flexibility Act.

The FAA's authority to issue rules regarding aviation safety is found in Title 49 of the U.S. Code. Subtitle 1, Section 106 describes the authority of the FAA Administrator. Subtitle VII, Aviation Programs, describes in more detail the scope of the agency's authority. This rulemaking is promulgated under the authority described in Subtitle VII, Part A, Subpart I, Section 40103. Under that section, the FAA is charged with prescribing regulations to assign the use of airspace necessary to ensure the safety of aircraft and the efficient use of airspace. This regulation is within the scope of that authority as it would add additional controlled airspace at Platteville Municipal Airport, Platteville, WI.

List of Subjects in 14 CFR Part 71

Airspace, Incorporation by reference, Navigation (Air).

The Proposed Amendment

In consideration of the foregoing, the Federal Aviation Administration proposes to amend 14 CFR Part 71 as follows:

PART 71—DESIGNATION OF CLASS A, B, C, D, AND E AIRSPACE AREAS; AIR TRAFFIC SERVICE ROUTES; AND REPORTING POINTS

1. The authority citation for part 71 continues to read as follows:

Authority: 49 U.S.C. 106(g); 40103, 40113, 40120; E.O. 10854, 24 FR 9565, 3 CFR, 1959–1963 Comp., p. 389.

§ 71.1 [Amended]

2. The incorporation by reference in 14 CFR 71.1 of FAA Order 7400.9S, Airspace Designations and Reporting Points, dated October 3, 2008, and effective October 31, 2008, is amended as follows:

Paragraph 6005 Class E Airspace areas extending upward from 700 feet or more above the surface of the earth.

* * * * *

AGL WI E5 Platteville, WI [Amended]

Platteville Municipal Airport, WI
(Lat. 42°41′22″ N., long. 90°26′40″ W.)

That airspace extending upward from 700 feet above the surface within a 7.4-mile radius of Platteville Municipal Airport and within 4 miles each side of the 145° bearing from the airport extending from the 7.4-mile radius to 10.2 miles southeast of the airport.

* * * * *

Issued in Fort Worth, TX, on July 16, 2009.

Anthony D. Roetzel,

Manager, Operations Support Group, ATO Central Service Center.

[FR Doc. E9–17857 Filed 7–24–09; 8:45 am]

BILLING CODE 4910–13–P

FEDERAL TRADE COMMISSION

16 CFR Part 429

Cooling-Off Period for Sales Made at Homes or at Certain Other Locations

AGENCY: Federal Trade Commission (''FTC'' or ''Commission'').

ACTION: Reopening of comment period.

SUMMARY: On April 21, 2009, the Commission published a *Federal Register* document soliciting public comment in connection with its review of the Trade Regulation Rule Concerning Cooling-Off Period for Sales Made at Homes or at Certain Other Locations (''Cooling-Off Rule'' or ''Rule''). On June 22, 2009, Consumers for Auto Reliability and Safety, Consumers Union, and the National Consumer Law Center filed a joint letter requesting the Commission to extend the comment period for an additional sixty days. In response to this joint request, the Commission has decided to reopen the comment period for all interested parties for sixty days.

DATES: Written comments concerning the Cooling-Off Rule must be received no later than September 25, 2009.

ADDRESSES: Interested parties are invited to submit written comments electronically or in paper form. Comments should refer to ''Cooling-Off Rule Regulatory Review, 16 CFR 429, Comment, Project No. P087109'' to facilitate the organization of comments. Please note that your comment – including your name and your state – will be placed on the public record of this proceeding, including on the publicly accessible FTC website, at (*http://ftc.gov/os/publiccomments.shtm*).

Because comments will be made public, they should not include any sensitive personal information, such as an individual's Social Security Number; date of birth; driver's license number or other state identification number, or foreign country equivalent; passport number; financial account number; or

credit or debit card number. Comments also should not include any sensitive health information, such as medical records or other individually identifiable health information. In addition, comments should not include any ''[t]rade secret or any commercial or financial information which is obtained from any person and which is privileged or confidential. . . ,'' as provided in Section 6(f) of the FTC Act, 15 U.S.C. 46(f), and Commission Rule 4.10(a)(2), 16 CFR 4.10(a)(2). Comments containing material for which confidential treatment is requested must be filed in paper form, must be clearly labeled ''Confidential,'' and must comply with FTC Rule 4.9(c).[1]

A comment filed in paper form should include the ''Cooling-Off Rule Regulatory Review, 16 CFR 429, Comment, Project No. P087109'' reference both in the text and on the envelope, and should be mailed or delivered to the following address: Federal Trade Commission/Office of the Secretary, Room H-135 (Annex M), 600 Pennsylvania Avenue, N.W., Washington, D.C. 20580. The FTC is requesting that any comment filed in paper form be sent by courier or overnight service, if possible, because U.S. postal mail in the Washington area and at the Commission is subject to delay due to heightened security precautions.

You also may consider submitting your comments in electronic form. Comments filed in electronic form should be submitted by following the instructions on the web-based form at the weblink (*https://secure.commentworks.com/ftc-cooling-offrulereview*). To ensure that the Commission considers an electronic comment, you must file it on the web-based form at (*https://secure.commentworks.com/ftc-cooling-offrulereview*). If this Notice appears at (*http://www.regulations.gov/search/index.jsp*), you also may file an electronic comment through that website. The Commission will consider all comments that regulations.gov forwards to it. You also may visit the FTC website at (*http://www.ftc.gov*) to read the Notice and the news release describing it.

The Federal Trade Commission Act (''FTC Act'') and other laws the Commission administers permit the collection of public comments to consider and use in this proceeding as appropriate. The Commission will consider all timely and responsive public comments that it receives, whether filed in paper or electronic form. Comments received will be available to the public on the FTC website, to the extent practicable, at (*http://www.ftc.gov./os/publiccomments.shtm*). As a matter of discretion, the FTC makes every effort to remove home contact information for individuals from the public comments it receives before placing those comments on the FTC website. To read our policy on how we handle the information you submit – including routine uses permitted by the Privacy Act – please review the FTC's privacy policy, at (*http://www.ftc.gov/ftc/privacy.shtm*).

FOR FURTHER INFORMATION CONTACT: Sana Coleman Chriss, Attorney, (404) 656-1364, Federal Trade Commission, Southeast Region, 225 Peachtree Street, NE, Suite 1500, Atlanta, Georgia 30303.

SUPPLEMENTARY INFORMATION: The Commission's April 21, 2009 *Federal Register* notice sought comments on a number of general issues, including the continuing need for the Rule, its economic impact, and the effect of any technological, economic, or industry changes on the Rule.

The comment period closed on June 22, 2009. Three comments were received during the comment period. On that date, the Commission also received a request from Consumers for Auto Reliability and Safety, Consumers Union, and the National Consumer Law Center to extend the comment period for an additional sixty days. To provide all interested parties with additional time for filing comments, the Commission has decided to reopen the comment period. The Commission believes that the benefit of enhancing the record by reopening the comment period outweighs any delay. Accordingly, the Commission has decided to reopen the comment period for sixty days.

By direction of the Commission.

Donald S. Clark

Secretary

[FR Doc. E9–17758 Filed 7–24–09: 2:30 pm]

BILLING CODE 6750–01–S

[1]The comment must be accompanied by an explicit request for confidential treatment, including the factual and legal basis for the request, and must identify the specific portions of the comment to be withheld from the public record. The request will be granted or denied by the Commission's General Counsel, consistent with applicable law and the public interest. *See* Commission Rule 4.9(c), 16 CFR 4.9(c).

DEPARTMENT OF THE TREASURY

Internal Revenue Service

26 CFR Part 301

[REG–152166–05]

RIN 1545–BF33

Taxpayer Assistance Orders

AGENCY: Internal Revenue Service (IRS), Treasury.

ACTION: Withdrawal of notice of proposed rulemaking and notice of proposed rulemaking.

SUMMARY: This document withdraws the notice of proposed rulemaking published on April 19, 1996, in the **Federal Register** and contains proposed regulations relating to the issuance of Taxpayer Assistance Orders (TAOs). The IRS is issuing these proposed regulations to provide guidance relating to the issuance of a TAO. These proposed regulations are necessary because the existing regulations do not reflect changes to the law made by the Taxpayer Bill of Rights II (TBOR 2), the Internal Revenue Service Restructuring and Reform Act of 1998 (RRA 98), the Community Renewal Tax Relief Act of 2000, and the American Jobs Creation Act of 2004 (AJCA). The action taken in these proposed regulations will affect IRS employees in cases where a TAO is being considered or issued.

DATES: Written or electronic comments and requests for a public hearing must be received by October 26, 2009.

ADDRESSES: Send submissions to: CC:PA:LPD:PR (REG–152166–05), room 5205, Internal Revenue Service, P.O. Box 7604, Ben Franklin Station, Washington, DC 20224. Submissions may be hand delivered Monday through Friday between the hours of 8 a.m. and 4 p.m. to CC:PA:LPD:PR (REG–152166–05), Courier's Desk, Internal Revenue Service, 1111 Constitution Avenue, NW., Washington, DC 20044, or sent electronically via the Federal eRulemaking Portal at *http://www.regulations.gov/* (IRS REG–152166–05).

FOR FURTHER INFORMATION CONTACT: Concerning the proposed regulations, Janice R. Feldman, (202) 622–8488; concerning submissions of comments, *Richard.A.Hurst@irscounsel.treas.gov* (202) 622–7180 (not toll-free numbers).

SUPPLEMENTARY INFORMATION:

Background

Section 7811 of the Internal Revenue Code (Code) authorizes the NTA to issue a TAO when a taxpayer is suffering or is about to suffer a significant hardship

as a result of the manner in which the internal revenue laws are being administered by the IRS and the law and the facts support relief. A TAO may be issued to direct that the operating division or function take a specific action, cease a specific action, or refrain from taking a specific action or to order the IRS to review at a higher level, expedite consideration of, or reconsider a taxpayer's case. The IRS will comply with a TAO unless it is appealed and then modified or rescinded by the Commissioner, the Deputy Commissioner, or the NTA. Appeal procedures are provided in the Internal Revenue Manual (IRM).

Proposed regulations were published on April 19, 1996, in the **Federal Register** (61 FR 17265). The proposed regulations limited the authority to modify or rescind TAOs to the Ombudsman, the Commissioner, and the Deputy Commissioner, and, with the written authorization of one of these officials, a district director, a service center director, a compliance center director, a regional director of appeals (director), or the superiors of a director. Following the publication of the proposed regulations, Congress enacted TBOR 2, Public Law 104–168, 110 Stat. 1452 (1996), which, among other things, authorized only the Taxpayer Advocate, the Commissioner, or the Deputy Commissioner to modify or rescind a TAO. In light of the enactment of TBOR 2, this document withdraws the proposed regulations published in the **Federal Register** on April 19, 1996.

This document also contains proposed amendments to the Procedure and Administration Regulations (26 CFR part 301) relating to TAOs under section 7811. Temporary regulations (TD 8246) were published on March 22, 1989, in the **Federal Register** (54 FR 11699). Final regulations (TD 8403) were published on March 23, 1992, in the **Federal Register** (57 FR 9975). After the final regulations were published, sections 101 and 102 of TBOR 2, Public Law 104–168, 110 Stat. 1452 (1996), amended section 7811 by changing the name of the Ombudsman to the Taxpayer Advocate, providing that TAOs may order the IRS to take certain affirmative actions, and restricting who may modify or rescind a TAO. Section 1102 of RRA 98, Public Law 105–206, 112 Stat. 685 (1998), further amended section 7811, by providing examples of significant hardship and replacing ''Taxpayer Advocate'' with ''National Taxpayer Advocate.'' Section 881(c) of AJCA, Public Law 108–357, 118 Stat. 1418 (2004) clarified that a TAO applies to personnel performing services under a qualified tax collection contract to the same extent as it applies to IRS personnel. Thus, this document contains a new notice of proposed rulemaking implementing the amendments under section 7811 pursuant to the enactment of TBOR 2, RRA 98, the Community Renewal Tax Relief Act of 2000, and AJCA and also to provide guidance on issues that have arisen in the administration of section 7811. Section 301.7811–1(e) of the existing regulations, which concerns the suspension of statutes of limitations, is not being revised as part of this proposed rulemaking as changes to that section may involve changes to IRS computer processing systems and will be dealt with at a later date.

Explanation of Provision

1. Significant Hardship

Under Section 301.7811–1(a)(4)(ii) of the existing regulations, *significant hardship* means ''serious privation caused or about to be caused to the taxpayer as the result of the particular manner in which the internal revenue laws are being administered by the Internal Revenue Service.'' RRA 98 clarified the meaning of the term *significant hardship* by providing a nonexclusive list of types. Section 7811(a)(2) provides that *significant hardship* includes: (1) An immediate threat of adverse action; (2) a delay of more than 30 days in resolving taxpayer account problems; (3) the incurring by the taxpayer of significant costs (including fees for professional representation) if relief is not granted; or (4) irreparable injury to, or a long-term adverse impact on, the taxpayer if relief is not granted. Thus, the proposed regulations list the statutory types and also provide guidance with regard to what constitutes significant hardship under the delay standard and other criteria. Significant hardship under the 30-day delay standard is met when a taxpayer does not receive a response by the date promised by the IRS, or when the IRS has established a normal processing time for taking an action and the taxpayer experiences a delay of more than 30 days beyond the normal processing time.

2. Distinction Between Significant Hardship and Issuance of TAO

The proposed regulations discuss the distinction between a finding of ''significant hardship'' and ''the issuance of a TAO.'' The proposed regulations are designed to clarify that a finding by the NTA that a taxpayer is suffering or about to suffer a significant hardship as a result of the manner in which the internal revenue laws are being administered by the IRS will not automatically result in the issuance of a TAO. After making a determination of significant hardship, the NTA must determine whether the facts and the law support relief.

3. Compliance With the TAO

The proposed regulations explain that a TAO is an order by the NTA to the IRS and that the IRS will comply with the terms of the TAO unless it is appealed and then modified or rescinded by the Commissioner, the Deputy Commissioner, or the NTA. If a TAO is modified or rescinded by the Commissioner or Deputy Commissioner, a written explanation of the reasons for the modification or rescission must be provided to the NTA. Furthermore, the proposed regulations clarify that a TAO is not intended to be a substitute for an established administrative or judicial review procedure, but rather is intended to supplement these procedures if a taxpayer is about to suffer or is suffering a significant hardship. Thus, a taxpayer's right to administrative or judicial review will not be diminished or expanded in any way as a result of the taxpayer's seeking assistance from the Taxpayer Advocate Service (TAS).

4. Form of Request

The proposed regulations provide that a request for a TAO shall be made on a Form 911, ''Request for Taxpayer Advocate Service Assistance (and Application for Taxpayer Assistance Order)'' (or other specified form) or in a written statement that provides sufficient information for TAS to determine the nature of the harm or the need for assistance.

5. Scope of the TAO

The proposed regulations provide that the NTA can issue a TAO directing an action in the circumstances outlined in section 7811(b). Section 7811(b) provides that the NTA may issue a TAO ordering the IRS within a specified time to (i) release levied property, or (ii) cease any action, take any action as permitted by law, or refrain from taking any action with respect to a taxpayer under: (A) Chapter 64 (relating to collection); (B) chapter 70, subchapter B (relating to bankruptcy and receiverships); (C) chapter 78 (relating to discovery of liability and enforcement of title); or (D) any other provision of law specifically described by the NTA in the TAO. Consistent with the list of specific subchapter and chapters of the Code in section 7811(b), the proposed regulations provide that the phrase ''any provision of law'' refers to other provisions of the internal revenue laws

similar to the provisions enumerated in the statute.

The proposed regulations further provide that in circumstances where the statute does not authorize the issuance of a TAO to order a specific action, if the NTA determines that the taxpayer is suffering or about to suffer a significant hardship and that the issuance of a TAO is appropriate, the NTA may issue a TAO seeking to expedite, review, or reconsider an action at a higher level. Although the statute does not expressly state that a TAO may be issued to request that the IRS expedite, review, or reconsider at a higher level an action, the statute and the legislative history support this interpretation.

As initially enacted, section 7811(b) did not grant the Ombudsman (the predecessor to the NTA) the authority to order affirmative actions. At that time, section 7811(b) provided that a TAO could order either the release of levy or could order the IRS to cease or refrain from taking an action under the three enumerated chapters of the Code listed in the statute. Thus, under the initial version of section 7811(b)(2), except for releasing levies, TAOs could not be issued to take affirmative actions. For example, a TAO could order the IRS to refrain from filing a Notice of Federal Tax Lien (NFTL), but it could not require the IRS to release an NFTL. Delegation Order (DO) 239 (01–31–92) remedied this problem by delegating to the Ombudsman the authority to order affirmative acts. Congress also recognized the deficiency in the law and amended section 7811(b) as part of TBOR 2 to allow TAOs to be issued with respect to affirmative acts by inserting the words ''take any action as permitted by law'' into the statute. The Committee Report to TBOR 2, H. Rep. No. 104–506, 104th Cong., 2nd Sess., at 1148 (1996), explains how the existing law was deficient in that, for example, it did not allow a TAO to be issued to expedite a refund or review the validity of a tax deficiency. The report explains that the reason for amendment to section 7811(b) was to allow a TAO to be issued ''for a review of the appropriateness of the proposed action.'' Thus, consistent with the legislative history and the statutory amendments, the proposed regulations provide that where the statute does not authorize the issuance of a TAO to order a specific action, if the NTA determines that a taxpayer is suffering or about to suffer a significant hardship and that relief is appropriate, the NTA may issue a TAO seeking to expedite, review, or reconsider an action at a higher level.

6. Who Is Subject to a TAO?

The proposed regulations provide rules regarding who is subject to a TAO. Generally, a TAO can be issued to any operating division or function of the IRS. Due to the sensitivity and importance of criminal investigations, the proposed regulations provide that a TAO may not be issued if the action ordered in the TAO could reasonably be expected to impede a criminal investigation. The IRS Criminal Investigation division (CI) will determine whether the action ordered in the TAO could reasonably be expected to impede an investigation. Procedures for handling cases where the NTA questions CI's initial determination will be added to the IRM.

The rule for issuing a TAO to the Office of Chief Counsel has been updated to reflect the reorganization of the IRS as well as statutory changes. The existing regulations provide that: ''[a] taxpayer assistance order may generally not be issued * * * to enjoin an act of the Office of Chief Counsel (with the exception of Appeals).'' Due to a reorganization of the Office of Chief Counsel, effective October 1, 1995, Appeals is no longer a component of the Office of Chief Counsel. Accordingly, the proposed regulations eliminate the parenthetical reference to Appeals in § 301.7811–1(c)(3). The NTA continues to have the authority to issue TAOs to Appeals. Additionally, at the time that the existing regulations were finalized, the Ombudsman could not issue a TAO to order an affirmative act, other than a release of levy. As discussed in this preamble, under the current version of the statute, the NTA has much broader authority regarding the ability to order an affirmative act. Thus, the term ''enjoin'' has also been eliminated, and the rule under the proposed regulations is that: ''[g]enerally a TAO may not be issued to the Office of Chief Counsel.''

Special Analyses

This notice of proposed rulemaking is not a significant regulatory action as defined in Executive Order 12866. Therefore, a regulatory assessment is not required. It has also been determined that section 553(b) of the Administrative Procedure Act (5 U.S.C. chapter 5) does not apply to these regulations. Pursuant to the Regulatory Flexibility Act (5 U.S.C. chapter 6), it is hereby certified that these regulations will not have a significant economic impact on a substantial number of small entities. The information required under these proposed regulations is already required by the current regulations and the Form 911, ''Request for Taxpayer Advocate Service Assistance (and Application for Taxpayer Assistance order).'' In addition, the Form 911 takes minimal time and expense to prepare, and the filing of a Form 911 is optional. Therefore, preparing the Form 911 does not significantly increase the burden on taxpayers. Based on these facts, the Treasury Department and the IRS have determined that these proposed regulations will not have a significant economic impact on a substantial number of small entities. Furthermore, the substance of the regulations does not concern the Form 911, but the procedures the Taxpayer Advocate Service (TAS) or the Internal Revenue Service (IRS) must follow with respect to taxpayer assistance orders. Therefore, any burden created by these regulations is on the TAS or IRS, not taxpayers. Pursuant to section 7805(f) of the Code, this notice of proposed rulemaking has been submitted to the Chief Counsel for Advocacy of the Small Business Administration for comment on its impact on small business.

Comments and Requests for a Public Hearing

Before these proposed regulations are adopted as final regulations, consideration will be given to any written or electronic comments that are submitted timely to the IRS. All comments will be available for public inspection and copying. A public hearing may be scheduled if requested in writing by any person who timely submits written comments. If a public hearing is scheduled, notice of the date, time, and place for the public hearing will be published in the **Federal Register**.

Drafting Information

The principal author of these regulations is Janice R. Feldman, Office of the Special Counsel (National Taxpayer Advocate Program) (CC:NTA).

List of Subjects in 26 CFR Part 301

Employment taxes, Estate taxes, Excise taxes, Gift taxes, Income taxes, Penalties, Reporting and recordkeeping requirements.

Withdrawal of Proposed Regulations

Accordingly, under the authority of 26 U.S.C. 7805, the notice of proposed rulemaking that was published in the **Federal Register** on April 19, 1996 (61 FR 17265) is withdrawn.

Proposed Amendments to the Regulations

Accordingly, 26 CFR part 301 is proposed to be amended as follows:

PART 301—PROCEDURE AND ADMINISTRATION

Paragraph 1. The authority citation for part 301 continues to read in part as follows:

Authority: 26 U.S.C. 7805 * * *

Par. 2. Section 301.7811–1 is amended by revising paragraphs (a), (b), (c) and (d), removing paragraphs (f), (g), (h) and redesignating paragraph (h) as (f) and revising newly designated paragraph (f) to read as follows:

§ 301.7811–1 Taxpayer Assistance Orders.

(a) *Authority to issue*—(1) *In general.* When an application for a Taxpayer Assistance Order (TAO) is filed by the taxpayer or the taxpayer's authorized representative in the form, manner and time specified in paragraph (b) of this section, the National Taxpayer Advocate (NTA) may issue a TAO if, in the determination of the NTA, the taxpayer is suffering or is about to suffer a significant hardship as a result of the manner in which the internal revenue laws are being administered by the Internal Revenue Service (IRS), including action or inaction on the part of the IRS.

(2) *The National Taxpayer Advocate defined.* The term *National Taxpayer Advocate* includes any designee of the NTA, such as a Local Taxpayer Advocate.

(3) *Issuance without a written application.* The NTA may issue a TAO in the absence of a written application by the taxpayer under section 7811(a).

(4) *Significant hardship*—(i) *Determination required.* Before a TAO may be issued, the NTA is required to make a determination regarding significant hardship.

(ii) *Term Defined.* The term *significant hardship* means a serious privation caused or about to be caused to the taxpayer as the result of the particular manner in which the revenue laws are being administered by the IRS. Significant hardship includes situations in which a system or procedure fails to operate as intended or fails to resolve the taxpayer's problem or dispute with the IRS. A significant hardship also includes, but is not limited to:

(A) An immediate threat of adverse action;

(B) A delay of more than 30 days in resolving taxpayer account problems;

(C) The incurring by the taxpayer of significant costs (including fees for professional representation) if relief is not granted; or

(D) Irreparable injury to, or a long-term adverse impact on, the taxpayer if relief is not granted.

(iii) *A delay of more than 30 days in resolving taxpayer account problems is further defined.* A delay of more than 30 days in resolving taxpayer account problems exists under the following conditions:

(A) When a taxpayer does not receive a response by the date promised by the IRS; or

(B) When the IRS has established a normal processing time for taking an action and the taxpayer experiences a delay of more than 30 days beyond the normal processing time.

(iv) *Examples of significant hardship.* The provisions of this section are illustrated by the following examples:

Example 1. Immediate threat of adverse action. The IRS serves a levy on A's bank account. A needs the bank funds to pay for a medically necessary surgical procedure that is scheduled to take place in one week. If the levy is not released, A will lack the funds necessary to have the procedure. A is experiencing an immediate threat of adverse action.

Example 2. Delay of more than 30 days. B files a Form 4506, ''Request for a Copy of Tax Return.'' B does not receive the photocopy of the tax return after waiting more than 30 days beyond the normal time for processing. B is experiencing a delay of more than 30 days.

Example 3. Significant costs. The IRS sends XYZ, Inc. several notices requesting payment of the outstanding employment taxes owed by XYZ, Inc. and four of its subsidiaries. The IRS contends that XYZ, Inc. and the four subsidiaries have small employment tax balances with respect to 12 employment tax quarters totaling $10X. XYZ, Inc. provides documentation to the IRS which it contends shows that if all payments were applied to each entity correctly, there would be no balance due. The IRS requests additional records and documentation. Because there are 60 tax periods (12 quarters for each of the five entities) involved, to comply with this request XYZ, Inc. will need to hire an accountant, who estimates he will charge at least $5X to organize all the records and provide a detailed analysis of the how the payments should have been applied. XYZ, Inc. is facing significant costs.

Example 4. Irreparable injury. D has arranged with a bank to refinance his mortgage to lower his monthly payment. D is unable to make the current monthly payment. Unless the monthly payment amount is lowered, D will lose his residence to foreclosure. The IRS refuses to subordinate the Federal tax lien, as permitted by IRC section 6325(d), or discharge the property subject to the lien, as permitted by IRC section 6325(b). As a result, the bank will not allow D to refinance. D is facing an irreparable injury if relief is not granted.

(5) *Distinction Between Significant Hardship and the Issuance of a TAO.* A finding that a taxpayer is suffering or about to suffer a significant hardship as a result of the manner in which the internal revenue laws are being administered by the IRS will not automatically result in the issuance of a TAO. After making a determination of significant hardship, the NTA must determine whether the facts and the law support relief for the taxpayer. In cases where any IRS employee is not following applicable published administrative guidance (including the Internal Revenue Manual), the NTA shall construe the factors taken into account in determining whether to issue a TAO in the manner most favorable to the taxpayer.

(b) *Generally.* A TAO is an order by the NTA to the IRS. The IRS will comply with a TAO unless it is appealed and then modified or rescinded by the NTA, Commissioner or the Deputy Commissioner. If a TAO is modified or rescinded by the Commissioner or Deputy Commissioner, a written explanation of the reasons for the modification or rescission must be provided to the NTA. The NTA may not make a substantive determination of any tax liability. A TAO is also not intended to be a substitute for an established administrative or judicial review procedure, but rather is intended to supplement existing procedures if a taxpayer is about to suffer or is suffering a significant hardship. A request for a TAO shall be made on a Form 911, ''Request for Taxpayer Advocate Service Assistance (And Application for Taxpayer Assistance Order)'' (or other specified form) or in a written statement that provides sufficient information for TAS to determine the nature of the harm or the need for assistance. A taxpayer's right to administrative or judicial review will not be diminished or expanded in any way as a result of the taxpayer's seeking assistance from TAS.

(c) *Contents of Taxpayer Assistance Orders.* After establishing that the taxpayer is facing significant hardship and determining that the facts and law support relief to the taxpayer, the NTA may issue a TAO ordering the IRS within a specified time to—

(1) *Release a Levy.* Release levied property (to the extent that the IRS may by law release such property); or

(2) *Take Certain Other Actions.* Cease any action, take any action as permitted by law, or refrain from taking any action with respect to a taxpayer pursuant to—

(i) Chapter 64 (relating to collection);

(ii) Chapter 70, subchapter B (relating to bankruptcy and receiverships);

(iii) Chapter 78 (relating to discovery of liability and enforcement of title); or

(iv) Any other provision of the internal revenue laws specifically described by the NTA in the TAO.

(3) *Expedite, Review or Reconsider an Action at a Higher Level.* Although the NTA may not make the substantive determination, a TAO may be issued to

require the IRS to expedite, reconsider, or review at a higher level an action taken with respect to a determination or collection of a tax liability.

(4) *Examples.* The following examples assume the existence of significant hardship:

Example 1. J contacts a local taxpayer advocate because a wage levy is causing financial difficulties. The NTA determines that the levy should be released as it is causing economic hardship (within the meaning of section 6343(a) and Treas. Reg. § 301.6343–1(b)(4)). The NTA may issue a TAO ordering the IRS to release the levy in whole or in part by a specified date.

Example 2. The IRS rejects K's offer in compromise. K files a Form 911, ''Request for Taxpayer Advocate Service Assistance (and Application for Taxpayer Assistance Order).'' The NTA discovers facts that support acceptance of the offer in compromise. The NTA may issue a TAO ordering the IRS to reconsider its rejection of the offer or to review the rejection of the offer at a higher level. The TAO may include NTA analysis of and recommendation for resolving the case.

Example 3. L files a protest requesting Appeals consideration of IRS's proposed denial of L's request for innocent spouse relief. Appeals advises L that it is going to issue a Final Determination denying the request for innocent spouse relief. L files a Form 911, ''Request for Taxpayer Advocate Service Assistance (and Application for Taxpayer Assistance Order).'' The NTA reviews the administrative record and concludes that the facts support granting innocent spouse relief. The NTA may issue a TAO ordering Appeals to refrain from issuing a Final Determination and reconsider or review at a higher level its decision to deny innocent spouse relief. The TAO may include TAS analysis of and recommendation for resolving the case.

(d) *Issuance.* A TAO may be issued to any office, operating division, or function of the IRS. A TAO shall apply to persons performing services under a qualified tax collection contract (as defined in section 6306(b)) to the same extent and in the same manner as the order applies to IRS employees. A TAO will not be issued to IRS Criminal Investigation division (CI), or any successor IRS division responsible for the criminal investigation function, if the action ordered in the TAO could reasonably be expected to impede a criminal investigation. CI will determine whether the action ordered in the TAO could reasonably be expected to impede an investigation. Generally, a TAO may not be issued to the Office of Chief Counsel.

* * * * *

(f) *Effective applicability date.* These regulations are applicable for TAOs issued on or after the date of publication of the Treasury decision adopting these rules as final regulations in the **Federal Register**, except that paragraph (e) is applicable beginning March 20, 1992.

Linda E. Stiff,

Deputy Commissioner for Services and Enforcement.

[FR Doc. E9–17747 Filed 7–24–09; 8:45 am]

BILLING CODE 4830–01–P

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 52

[EPA–R04–OAR–2009–0023; FRL–8935–2]

Approval and Promulgation of Implementation Plans; Kentucky; Variance of Avis Rent-A-Car and Budget Rent-A-Car Facilities Located at the Cincinnati/Northern Kentucky International Airport

AGENCY: Environmental Protection Agency (EPA).

ACTION: Proposed rule.

SUMMARY: EPA is proposing to approve the source-specific State Implementation Plan (SIP) revision submitted by the Commonwealth of Kentucky on February 4, 2009, for the purpose of removing Stage II vapor control requirements at Avis Rent-A-Car, and Budget Rent-A-Car facilities located at the Cincinnati/Northern Kentucky International Airport. This proposed revision to the SIP is approvable based on the December 12, 2006, EPA policy memorandum from Stephen D. Page entitled *Removal of Stage II Vapor Recovery in Situations Where Widespread Use of Onboard Refueling Vapor Recovery is Demonstrated.* This action is being taken pursuant to Section 110 of the Clean Air Act (CAA).

DATES: Written comments must be received on or before August 26, 2009.

ADDRESSES: Submit your comments, identified by Docket ID No. EPA–R04–OAR–2009–0023 by one of the following method:

1. *http://www.regulations.gov:* Follow the on-line instructions for submitting comments.
2. *E-mail: benjamin.lynorae@epa.gov.*
3. *Fax:* (404) 562–9019.
4. *Mail:* ''EPA–R04–OAR–2009–0023'', Regulatory Development Section; Air Planning Branch; Air, Pesticides and Toxics Management Division; U.S. Environmental Protection Agency, Region 4, 61 Forsyth Street, SW., Atlanta, Georgia 30303–8960.
5. *Hand Delivery or Courier:* Lynorae Benjamin, Regulatory Development Section; Air Planning Branch; Air, Pesticides and Toxics Management Division; U.S. Environmental Protection Agency, Region 4, 61 Forsyth Street, SW., Atlanta, Georgia 30303–8960. Such deliveries are only accepted during the Regional Office's normal hours of operation. The Regional Office's official hours of business are Monday through Friday, 8:30 to 4:30, excluding Federal holidays.

Instructions: Direct your comments to Docket ID No. ''EPA–R04–OAR–2009–0023''. EPA's policy is that all comments received will be included in the public docket without change and may be made available online at *http://www.regulations.gov,* including any personal information provided, unless the comment includes information claimed to be Confidential Business Information (CBI) or other information whose disclosure is restricted by statute. Do not submit through *http://www.regulations.gov* or e-mail, information that you consider to be CBI or otherwise protected. The *http://www.regulations.gov* Web site is an ''anonymous access'', which means EPA will not know your identity or contact information unless you provide it in the body of your comments. If you send an e-mail comment directly to EPA without going through *http://www.regulations.gov,* your e-mail address will be automatically captured and included as part of the comment that is placed in the public docket and made available on the Internet. If you submit an electronic comment, EPA recommends that you include your name and other contact information in the body of your comment and with any disk or CD–ROM you submit. If EPA cannot read your comment due to technical difficulties and cannot contact you for clarification, EPA may not be able to consider you comment. Electronic files should avoid the use of special characters, any form of encryption, and be free of any defects or viruses. For additional information about EPA's public docket visit the EPA Docket Center homepage at *http://www.epa.gov/epahome/dockets.htm.*

Docket: All documents in the electronic docket are listed in the *http://www.regulations.gov* index. Although listed in the index, some information is not publicly available, *i.e.,* CBI or other information whose disclosure is restricted by statute. Certain other materials, such as copyrighted material, is not placed on the Internet and will be publicly available only in the hard copy form. Publicly available docket materials are available either electronically in *http://www.regulations.gov* or in hard copy at the Regulatory Development Section, Air Planning Branch, Air, Pesticide and

Toxics Management Division, U.S. Environmental Protection Agency, Region 4, 61 Forsyth Street, SW., Atlanta, Georgia 30303–8960. EPA requests that if at all possible, you contact the person listed in the **FOR FURTHER INFORMATION CONTACT** section to schedule your inspection. The Regional Office's official hours of business are Monday through Friday, 8:30 to 4:30, excluding Federal holidays.

FOR FURTHER INFORMATION CONTACT: Mohammad Madjdinasab, Regulatory Development Section; Air Planning Branch; Air, Pesticides and Toxics Management Division; U.S. Environmental Protection Agency, Region 4, 61 Forsyth Street, SW., Atlanta, Georgia 30303–8960. The telephone number is (404) 562–9026. Mr. Madjdinasab can also be reached via electronic mail at *madjdinasab.mohammad@epa.gov.*

SUPPLEMENTARY INFORMATION:

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I. Background

Under the CAA Amendments of 1990 (*See* 56 FR 56694, effective January 6, 1992), EPA designated and classified three Kentucky counties (Boone, Campbell, and Kenton in the Northern Kentucky Area) and four Ohio counties (Butler, Clermont, Hamilton, and Warren) as a ''moderate'' ozone nonattainment area as part of the Cincinnati/Northern Kentucky Area. The designation was based on the Area's 1-hour ozone design value of 0.157 parts per million (ppm) for the three year period of 1988–1990. Pursuant to the requirements of section 182(b)(3) of the CAA, the Commonwealth of Kentucky, Energy and Environment Cabinet, Division of Air Quality (KDAQ) developed Kentucky Administrative Regulations (KAR) 401 KAR 59:174 Stage II controls at gasoline dispensing facilities, and submitted the rule to EPA for approval as part of Kentucky's ozone SIP. The rule was adopted by the Commonwealth of Kentucky on January 12, 1998, and approved by EPA into the SIP on December 8, 1998 (63 FR 675896). Under this regulation, gasoline dispensing facilities with a monthly throughput of 25,000 gallons or more located in a Kentucky county in which the entire county is classified as severe, serious, or moderate nonattainment for ozone, are required to install Stage II vapor recovery systems.

On October 29, 1999, having implemented all measures required of Kentucky to that date for moderate ozone nonattainment areas under the CAA, and with three years of data (1996–1998) showing compliance with the 1-hour ozone standard, KDAQ submitted to EPA an ozone maintenance plan and request for redesignation of the Cincinnati/Northern Kentucky area to attainment status. The maintenance plan, as required under section 175A of the CAA, showed that nitrogen oxides and volatile organic compound (VOC) emissions in the area would remain below the 1990 ''attainment year'' levels. In making these projections, KDAQ factored in the emissions benefit (primarily VOCs) of the area's Stage II program, and did not remove this program as part of its 1-hour ozone SIP. The redesignation request and maintenance plan were approved by EPA, effective June 19, 2000 (65 FR 37879). Since the Kentucky Stage II program was already in place and had been included in the State's October 29, 1999, redesignation request and 1-hour ozone maintenance plan for the Area, KDAQ elected not to remove the program from the SIP at that time.

On April 6, 1994, EPA promulgated regulations requiring the phase-in of on-board refueling vapor recovery (ORVR) systems on new motor vehicles. Under Section 202(a)(6) of the CAA, moderate ozone nonattainment areas are not required to implement Stage II vapor recovery programs after promulgation of ORVR standards.

II. Analysis of Kentucky's Submittal

A. Requested Source Specific Exemption of Stage II Requirements

EPA's primary consideration for determining the approvability of Kentucky's request to exempt Stage II vapor control requirements for Avis Rent-A-Car and Budget Rent-A-Car facilities located at the Cincinnati/Northern Kentucky International Airport is whether this requested action complies with section 110 (a)(l) of the CAA. Below is EPA's analysis of these considerations.

1. Federal Requirements for Stage II

States were required to adopt Stage II rules for all areas classified as ''moderate'' or worse under section 182(b)(3) of the CAA. However, section 202(a)(6) of the CAA states that ''the requirements of section 182(b)(3) (relating to Stage II gasoline vapor recovery) for areas classified under section 181 as moderate for ozone shall not apply after promulgation of such standards.'' ORVR regulations were promulgated by EPA on April 6, 1994 (*see* 59 FR 16262, 40 CFR 86.001 and 40 CFR 86.098). As a result, the CAA no longer requires moderate areas to impose Stage II controls under section 182(b)(3), and such areas may seek SIP revisions to remove such requirements from their SIP, subject to section 110(l) of the Act. EPA's policy memorandum related to ORVR, dated March 9, 1993, and June 23, 1993, provided further guidance on an allowance for removing Stage II requirements from certain areas. The policy memorandum dated March 9, 1993 states ''When onboard rules are promulgated, a State may withdraw its stage II rules for moderate areas from the SIP (or from consideration as a SIP revision) consistent with its obligation under sections 182(b)(3) and 202(a)(6), so long as withdrawal will not interfere with any other applicable requirement of the Act.'' Because Kentucky is taking credit for Stage II in its maintenance plan, this action is subject to section 110(l) of the CAA, which states:

> *Plan Revision*—Each revision to an implementation plan submitted by a State under this chapter shall be adapted by such State after reasonable notice and public hearing. The Administrator shall not approve a revision of a plan if the revision would interfere with any applicable requirement concerning attainment and reasonable further progress (as defined in section 7501 of this title), or any other applicable requirement of this chapter.

As such, Kentucky must make a demonstration of noninterference in order to remove Stage II from the SIP for Avis Rent-A-Car and Budget Rent-A-Car facilities located at the Cincinnati/Northern Kentucky International Airport.

2. Cincinnati—Hamilton Interstate Area Air Quality Status

On April 30, 2004, EPA designated the Cincinnati/Northern Kentucky Area, which consists of Boone, Campbell, and Kenton Counties in Kentucky (and Butler, Clermont, Clinton, Hamilton, and Warren Counties in Ohio) as nonattainment for the 1997 8-hour ozone national ambient air quality standard (NAAQS) (69 FR 23857). The Cincinnati/Northern Kentucky Area remains designated as nonattainment, and has 2005–2007 and 2006–2008 8-hour ozone design values of 0.086 pp and 0.085 ppm, respectively. On March 12, 2008, EPA strengthened the 8-hour ozone NAAQS by revising it to 0.075. Designations for this new 8-hour NAAQS are scheduled for March 2010.

On January 5, 2005, EPA published designations for the 1997 annual and 24-hour $PM_{2.5}$ standard (70 FR 944). The Cincinnati/Northern Kentucky Area was designated as an attainment area for the 1997 24-hour $PM_{2.5}$ standard. However,

this same area was designated as nonattainment for the 1997 annual $PM_{2.5}$ standard and has remained as a nonattainment area for that standard. Compliance with the 1997 $PM_{2.5}$ annual standard is 15 microgram per cubic meter (ug/m^3). The annual $PM_{2.5}$ design value for Cincinnati/Northern Kentucky area for the period of 2005–2007 was 17.3 ug/m^3.

On October 17, 2006 and effective December 18, 2006, EPA published a rulemaking regarding the NAAQS for the $PM_{2.5}$ standard. Specifically, EPA retained the annual $PM_{2.5}$ standard of 15 ug/m^3 and revised 24-hour $PM_{2.5}$ standard, changing it from 65 ug/m^3 to 35 ug/m^3. The revision of the 24-hour $PM_{2.5}$ standard in 2006, triggered the designation process for the standard. Based on 2006–2008 monitoring data, the design value for the Cincinnati/Northern Kentucky Area is 34.9 ug/m^3, which is in compliance with the standard. The Commonwealth of Kentucky submitted a letter dated February 10, 2009, which requested that the Cincinnati/Northern Kentucky Area be classified attainment based on 2006–2008 data. EPA has yet to publish the final rulemaking with the final designations for the revised 24-hour $PM_{2.5}$ standard.

3. Non-Interference Demonstration for Exemption of Stage II Requirements

This proposed source-specific revision to the Kentucky SIP is approvable based on the CAA and the December 12, 2006, EPA memorandum from Stephen D. Page entitled, *Removal of Stage II Vapor Recovery in Situations Where Widespread Use of On-board Refueling Vapor Recovery is Demonstrated* which provides guidance to States concerning the removal of Stage II gasoline vapor recovery systems where States demonstrate to EPA that widespread use of ORVR has occurred in specific portions of the motor vehicle fleet. States were required to adopt Stage II rules for such areas under section 182(b)(3) of the CAA. However, Section 202(a)(6) of the CAA states that ''The requirements of section 182(b)(3) of this title (relating to stage II gasoline vapor recovery) for areas classified under section 181 of this title as moderate for ozone shall not apply after promulgation of such standards and the Administrator may, by rule, revise or waive the application of the requirements of such section 182(b)(3) of this title for areas classified under section 181 of this title as serious, severe, or extreme for ozone * * *.'' Section 202 On-board Refueling Vapor Recovery regulations were promulgated by EPA on April 6, 1994, and the requirements of these regulations are currently being phased in. In this circumstance, EPA does believe that a determination of ''widespread'' use is necessary to provide for the source specific SIP revision for Stage II requirements for Avis Rent-A-Car and Budget Rent-A-Car facilities. EPA's December 12, 2006, memorandum states that if 95 percent of the vehicles in a fleet have ORVR, then widespread use will likely have been demonstrated for that fleet. The memorandum addresses the following specific fleets:

- Initial fueling of new vehicles at automobile assembly plants;
- Refueling of rental cars at rental car facilities;
- Refueling of flexible fuel vehicles at E85 dispensing pumps.

Most large rental car companies rent current model vehicles that are equipped with ORVR and vehicle models are changed to current year models every year or two. The Commonwealth of Kentucky has confirmed that 100 percent and not less than 95 percent of vehicles at Avis Rent-A-Car and Budget Rent-A-Car facilities located at the Cincinnati/Northern Kentucky International Airport are equipped with ORVR.

CAA section 110(a)(2)(D)(i)(I) prohibits facilities within the State from emitting any air pollutants in amounts which will contribute significantly to nonattainment in, or interfere with maintenance by, any other State with respect to any such national primary or secondary ambient air quality standards. The only pollutant emitted by refueling vehicles is VOC, which is a precursor of ozone, and its emissions are mitigated by use of vehicles equipped with ORVR. Kentucky has adequately demonstrated that ORVR has supplanted Stage II requirements at Avis Rent-A-Car and Budget Rent-A-Car facilities.

III. Proposed Action

EPA is proposing to approve the aforementioned source-specific SIP revision request from Kentucky. VOC emissions from vehicles at Avis Rent-A-Car and Budget Rent-A-Car facilities are controlled by ORVR, therefore, we conclude that removal of Stage II requirements at these facilities would not result in an increase of VOC emissions, and thus would not contribute to ozone formation. The Commonwealth is seeking to remove this requirement for these rent-a-car facilities and has fully satisfied the requirements of Section 110(l) of the CAA. Therefore, we are proposing to approve this source-specific SIP revision, as it is consistent with Section 110 of CAA.

IV. Statutory and Executive Order Reviews

Under the CAA, the Administrator is required to approve a SIP submission that complies with the provisions of the Act and applicable Federal regulations 42 U.S.C. 7410(k); 40 CFR 52.02(a). Thus, in reviewing SIP submissions, EPA's role is to approve State choices, provided that they meet the criteria of the CAA. Accordingly, this proposed action merely approves State law as meeting Federal requirements and does not impose additional requirements beyond those imposed by State law. For that reason, this proposed action:

- Is not a ''significant regulatory action'' subject to review by the Office of Management and Budget under Executive Order 12866 (58 FR 51735, October 4, 1993);
- Does not impose an information collection burden under the provisions of the Paperwork Reduction Act (44 U.S.C. 3501 *et seq.*);
- Is certified as not having a significant economic impact on a substantial number of small entities under the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*);
- Does not contain any unfunded mandate or significantly or uniquely affect small governments, as described in the Unfunded Mandates Reform Act of 1995 (Pub. L. 104–4);
- Does not have Federalism implications as specified in Executive Order 13132 (64 FR 43255, August 10, 1999);
- Is not an economically significant regulatory action based on health or safety risks subject to Executive Order 13045 (62 FR 19885, April 23, 1997);
- Is not a significant regulatory action subject to Executive Order 13211 (66 FR 28355, May 22, 2001);
- Is not subject to requirements of Section 12(d) of the National Technology Transfer and Advancement Act of 1995 (15 U.S.C. 272 note) because application of those requirements would be inconsistent with the CAA; and
- Does not provide EPA with the discretionary authority to address, as appropriate, disproportionate human health or environmental effects, using practicable and legally permissible methods, under Executive Order 12898 (59 FR 7629, February 16, 1994).

In addition, this rule does not have Tribal implications as specified by Executive Order 13175 (65 FR 67249, November 9, 2000), because the SIP is not approved to apply in an Indian country located in the State, and EPA notes that it will not impose substantial direct costs on Tribal governments or preempt Tribal laws.

List of Subjects in 40 CFR Part 52

Environmental Protection, Air pollution control, Incorporation by reference, Intergovernmental relations, Volatile organic compounds, Ozone, Sulfur oxides, Nitrogen dioxide.

Authority: 42 U.S.C. 7401 *et seq.*

Dated: July 7, 2009.

Beverly H. Banister,

Acting Regional Administrator, Region 4.

[FR Doc. E9–17823 Filed 7–24–09; 8:45 am]

BILLING CODE 6560–50–P

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 52

[EPA–R09–OAR–2009–0353; FRL–8935–3]

Revisions to the California State Implementation Plan, California Air Resources Board Consumer Products Regulations; Extension of Comment Period

AGENCY: Environmental Protection Agency (EPA).

ACTION: Proposed rule; extension of comment period.

SUMMARY: The EPA is announcing an extension of the public comment period for the proposed rule entitled ''Revisions to the California State Implementation Plan, California Air Resources Board Consumer Products Regulations.'' The proposed rule was initially published in the **Federal Register** on June 26, 2009. Written comments on the proposed rule were to be submitted to EPA on or before July 27, 2009 (30-day comment period). The EPA is extending the public comment period until August 27, 2009.

DATES: The comment period for the proposed rule published June 26, 2009 (74 FR 30481), is extended. Comments must be received on or before August 27, 2009.

ADDRESSES: Submit comments, identified by docket number EPA–R09–OAR–2009–0353, by one of the following methods:

1. *Federal eRulemaking Portal: http://www.regulations.gov.* Follow the on-line instructions.

2. *E-mail: steckel.andrew@epa.gov.*

3. *Mail or deliver:* Andrew Steckel (Air-4), U.S. Environmental Protection Agency, Region IX, 75 Hawthorne Street, San Francisco, CA 94105–3901.

Instructions: All comments will be included in the public docket without change and may be made available online at *http://www.regulations.gov,* including any personal information provided, unless the comment includes Confidential Business Information (CBI) or other information whose disclosure is restricted by statute. Information that you consider CBI or otherwise protected should be clearly identified as such and should not be submitted through *http://www.regulations.gov* or e-mail. *http://www.regulations.gov* is an ''anonymous access'' system, and EPA will not know your identity or contact information unless you provide it in the body of your comment. If you send e-mail directly to EPA, your e-mail address will be automatically captured and included as part of the public comment. If EPA cannot read your comment due to technical difficulties and cannot contact you for clarification, EPA may not be able to consider your comment.

Docket: The index to the docket for this action is available electronically at *http://www.regulations.gov* and in hard copy at EPA Region IX, 75 Hawthorne Street, San Francisco, California. While all documents in the docket are listed in the index, some information may be publicly available only at the hard copy location (e.g., copyrighted material), and some may not be publicly available in either location (e.g., CBI). To inspect the hard copy materials, please schedule an appointment during normal business hours with the contact listed in the **FOR FURTHER INFORMATION CONTACT** section.

FOR FURTHER INFORMATION CONTACT: Stanley Tong, EPA Region IX, (415) 947–4122, *tong.stanley@epa.gov.*

SUPPLEMENTARY INFORMATION: The proposed rule was signed by the Acting Regional Administrator on June 17, 2009 and published in the **Federal Register** on June 26, 2009 (74 FR 30481).

The proposed action provided a 30-day public comment period. EPA has received a request for an additional 30 days to comment on the proposed rule and is granting that request. Therefore, EPA is extending the comment period until August 27, 2009.

Dated: July 17, 2009.

Laura Yoshii,

Acting Regional Administrator, Region IX.

[FR Doc. E9–17832 Filed 7–24–09; 8:45 am]

BILLING CODE 6560–50–P

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 63

[EPA–HQ–OAR–2008–0080; FRL–8935–1]

RIN 2060–AO98

National Emission Standards for Hazardous Air Pollutants for Area Sources: Prepared Feeds Manufacturing

AGENCY: Environmental Protection Agency (EPA).

ACTION: Proposed rule.

SUMMARY: EPA is proposing national emissions standards for control of hazardous air pollutants from prepared feeds manufacturing facilities. The proposed emissions standards for new and existing sources are based on EPA's proposed determination as to what constitutes the generally available control technology or management practices for the area source category.

DATES: Comments must be received on or before August 26, 2009, unless a public hearing is requested by August 6, 2009. If a hearing is requested on the proposed rules, written comments must be received by September 10, 2009. Under the Paperwork Reduction Act, comments on the information collection provisions must be received by Office of Management and Budget (OMB) on or before August 26, 2009.

ADDRESSES: Submit your comments, identified by Docket ID No. EPA–HQ–OAR–2008–0080, may be submitted by one of the following methods:

- *Federal eRulemaking Portal: http://www.regulations.gov.* Follow the instructions for submitting comments.
- *Agency Web Site: http://www.epa.gov/oar/docket.html.* Follow the instructions for submitting comments on the EPA Air and Radiation Docket Web Site.
- *E-mail:* Comments may be sent by electronic mail (e-mail) to *a-and-r-docket@epa.gov,* include Docket ID No. EPA–HQ–OAR–2008–0080 in subject line of the message.
- *Fax:* Fax your comments to: (202) 566–9744, Docket ID No. EPA–HQ–OAR–2008–0080.
- *Mail:* Send your comments to: Air and Radiation Docket and Information Center, Environmental Protection Agency, Mailcode: 2822T, 1200 Pennsylvania Ave., NW., Washington, DC 20460, Docket ID No. EPA–HQ–OAR–2008–0080. Please include a total of two copies. In addition, please mail a copy of your comments on the information collection provisions to the Office of Information and Regulatory

Affairs, OMB, Attn: Desk Officer for EPA, 725 17th St., NW., Washington, DC 20503.

• *Hand Delivery or Courier:* Deliver your comments to: EPA Docket Center, Public Reading Room, EPA West, Room 3334, 1301 Constitution Ave., NW., Washington, DC 20460. Such deliveries are only accepted during the Docket's normal hours of operation, and special arrangements should be made for deliveries of boxed information.

Instructions: All submissions must include the agency name and docket number or Regulatory Information Number (RIN) for this rulemaking. All comments will be posted without change and may be made available online at *http://www.regulations.gov,* including any personal information provided, unless the comment includes information claimed to be confidential business information (CBI) or other information whose disclosure is restricted by statute. Do not submit information that you consider to be CBI or otherwise protected through *http://www.regulations.gov* or e-mail. The *http://www.regulations.gov* Web site is an ''anonymous access'' system, which means EPA will not know your identity or contact information unless you provide it in the body of your comment. If you send an e-mail comment directly to EPA without going through *http://www.regulations.gov,* your e-mail address will be automatically captured and included as part of the comment that is placed in the public docket and made available on the Internet. If you submit an electronic comment, EPA recommends that you include your name and other contact information in the body of your comment and with any disk or CD–ROM you submit. If EPA cannot read your comment due to technical difficulties and cannot contact you for clarification, EPA may not be able to consider your comment. Electronic files should avoid the use of special characters, any form of encryption, and be free of any defects or viruses.

For detailed instructions on submitting comments and additional information on the rulemaking process, see the ''Public Participation'' heading of the **SUPPLEMENTARY INFORMATION** section of this document.

Docket: All documents in the docket are listed in the *http://www.regulations.gov* index. Although listed in the index, some information is not publicly available, e.g., CBI or other information whose disclosure is restricted by statute. Certain other material, such as copyrighted material, will be publicly available only in hard copy form. Publicly available docket materials are available either electronically in *http://www.regulations.gov* or in hard copy at the EPA Center EPA Docket Center, 1301 Constitution Ave., NW., Room 3334, Washington, DC 20460. The Public Reading Room is open from 8:30 a.m. to 4:30 p.m., Monday through Friday, excluding legal holidays. The telephone number for the Public Reading Room is (202) 566–1744, and the telephone number for the Air Docket is (202) 566–1742.

FOR FURTHER INFORMATION CONTACT: Ms. Jan King, Outreach and Information Division, Office of Air Quality Planning and Standards (C404–05), U.S. Environmental Protection Agency, Research Triangle Park, North Carolina 27711, telephone number: (919) 541–5665; fax number: (919) 541–7674; e-mail address: *king.jan@epa.gov.*

SUPPLEMENTARY INFORMATION:

Outline. The information in this preamble is organized as follows:

I. General Information

A. Does this action apply to me?

The regulated categories and entities potentially affected by the proposed standards are prepared feeds manufacturers who add chromium compounds or manganese compounds to their product. In general, the facilities potentially affected by the rule are covered under the North American Industrial Classification System (NAICS) code listed in the following table.

Category	NAICS code [1]	Examples of regulated entities
Industry:		
Other Animal Foods Manufacturing	311119	Animal feeds, prepared (except dog and cat), manufacturing.

[1] North American Industry Classification System.

This table is not intended to be exhaustive, but rather provides a guide for readers regarding entities likely to be affected by this action. To determine whether your facility would be regulated by this action, you should examine the applicability criteria in 40 CFR 63.11619 of subpart DDDDDDD (NESHAP for Area Sources: Prepared Feeds Manufacturing). If you have any questions regarding the applicability of this action to a particular entity, consult either the air permit authority for the entity or your EPA regional

representative as listed in 40 CFR 63.13 of subpart A (General Provisions).

B. What should I consider as I prepare my comments to EPA?

Do not submit information containing CBI to EPA through *http://www.regulations.gov* or e-mail. Send or deliver information identified as CBI only to the following address: Roberto Morales, OAQPS Document Control Officer (C404–02), Office of Air Quality Planning and Standards, U.S. Environmental Protection Agency, Research Triangle Park, North Carolina 27711, Attention Docket ID EPA–HQ–OAR–2008–0080. Clearly mark the part or all of the information that you claim to be CBI. For CBI information in a disk or CD–ROM that you mail to EPA, mark the outside of the disk or CD–ROM as CBI and then identify electronically within the disk or CD–ROM the specific information that is claimed as CBI. In addition to one complete version of the comment that includes information claimed as CBI, a copy of the comment that does not contain the information claimed as CBI must be submitted for inclusion in the public docket. Information so marked will not be disclosed except in accordance with procedures set forth in 40 CFR part 2.

C. Where can I get a copy of this document?

In addition to being available in the docket, an electronic copy of this proposed action will also be available on the Worldwide Web (WWW) through the Technology Transfer Network (TTN). Following signature, a copy of this proposed action will be posted on the TTN's policy and guidance page for newly proposed or promulgated rules at the following address: *http://www.epa.gov/ttn/oarpg/*. The TTN provides information and technology exchange in various areas of air pollution control.

D. When would a public hearing occur?

If anyone contacts EPA requesting to speak at a public hearing concerning the proposed rule by August 6, 2009, we will hold a public hearing on August 11, 2009. Persons interested in presenting oral testimony at the hearing, or inquiring as to whether a hearing will be held, should contact Ms. Christine Adams at (919) 541–5590 at least two days in advance of the hearing. If a public hearing is held, it will be held at 10 a.m. at the EPA's Environmental Research Center Auditorium, 109 T.W. Alexander Drive, Research Triangle Park, NC, or an alternate site nearby.

II. Background Information for Proposed Area Source Standards

A. What is the statutory authority and regulatory approach for the proposed standards?

Section 112(d) of the Clean Air Act (CAA) requires us to establish national emission standards for hazardous air pollutants (NESHAP) for both major and area sources of hazardous air pollutants (HAP) that are listed for regulation under CAA section 112(c). A major source emits or has the potential to emit 10 tons per year (tons/yr) or more of any single HAP or 25 tons/yr or more of any combination of HAP. An area source is a stationary source that is not a major source.

Section 112(k)(3)(B) of the CAA calls for EPA to identify at least 30 HAP which, as the result of emissions from area sources, pose the greatest threat to public health in the largest number of urban areas. EPA implemented this provision in 1999 in the Integrated Urban Air Toxics Strategy (Strategy), (64 FR 38715, July 19, 1999). Specifically, in the Strategy, EPA identified 30 HAP that pose the greatest potential health threat in urban areas, and these HAP are referred to as the ''30 urban HAP.'' Section 112(c)(3) requires EPA to list sufficient categories or subcategories of area sources to ensure that area sources representing 90 percent of the emissions of the 30 urban HAP are subject to regulation. A primary goal of the Strategy is to achieve a 75 percent reduction in cancer incidence attributable to HAP emitted from stationary sources.

Under CAA section 112(d)(5), we may elect to promulgate standards or requirements for area sources ''which provide for the use of generally available control technologies or management practices (''GACT'') by such sources to reduce emissions of hazardous air pollutants.'' Additional information on GACT is found in the Senate report on the legislation (Senate Report Number 101–228, December 20, 1989), which describes GACT as:

> * * * methods, practices and techniques which are commercially available and appropriate for application by the sources in the category considering economic impacts and the technical capabilities of the firms to operate and maintain the emissions control systems.

Consistent with the legislative history, we can consider costs and economic impacts in determining GACT, which is particularly important when developing regulations for source categories that may have many small businesses such as this one.

Determining what constitutes GACT involves considering the control technologies and management practices that are generally available to the area sources in the source category. We also consider the standards applicable to major sources in the same industrial sector to determine if the control technologies and management practices are transferable and generally available to area sources. In appropriate circumstances, we may also consider technologies and practices at area and major sources in similar categories to determine whether such technologies and practices could be considered generally available for the area source category at issue. Finally, as noted above, in determining GACT for a particular area source category, we consider the costs and economic impacts of available control technologies and management practices on that category.

We are proposing these national emission standards in response to a court-ordered deadline that requires EPA to issue standards for this source category, listed pursuant to section 112(c)(3) and (k) by August 17, 2009 (*Sierra Club* v. *Johnson,* no. 01–1537, D.D.C., March 2006). Other rulemakings will include standards for the remaining source categories that are due in October 2009.

B. What source category is affected by the proposed standards?

The source category affected by the proposed standards is prepared feeds manufacturers (except for dog and cat food) who add chromium compounds or manganese compounds to their product. We listed the prepared feed source category under CAA section 112(c)(3) in one of a series of amendments (November 22, 2002, 67 FR 70427) to the original source category list included in the 1999 Strategy. The inclusion of this source category of the section 112(c)(3) area source category list is based on 1990 emissions data, as EPA used 1990 as the baseline year for that listing. Section 112(c)(3) requires EPA to list sufficient categories or subcategories of area sources to ensure that area sources representing 90 percent of the emissions of the 30 urban HAP are subject to regulation.

In preparing this proposed rule, we solicited information on the production operations, emission sources, and available controls using written facility surveys from, and operating permits for, prepared feed manufacturing area sources, as well as from reviews of published literature. We also held discussions with trade association and industry representatives. From this

research we found that the prepared feeds manufacturing area source category emits the listed urban HAP chromium compounds and manganese compounds. Based on current information, including the 2002 Census, we believe that there are around 1,800 area source prepared feed manufacturing facilities currently operating that add chromium compounds or manganese compounds to their products that would be subject to the proposed area source standards. These proposed standards do not apply to research and development facilities, as defined in section 112(c)(7) of the CAA.

C. What are the production operations, emission sources, and available controls?

Prepared feeds manufacturers produce feeds for large and small animals, from hamsters and gerbils to farm animals. Over 200 ingredients may be used in feed production operations including grain and byproducts such as meat meal, bone meal, beet, and tomato pulp. Medicinals, vitamins, and minerals are also added in small portions.

Grain is usually received at the mill by hopper bottom truck and/or rail cars, or in some cases, by barge. Most mills pass selected feed ingredients, primarily grains, through cleaning equipment prior to storage. Upon removal from storage, the grain is transferred to the grinding area, where selected whole grains, primarily corn, are ground prior to mixing with other feed components. The hammermill is the most widely used grinding device. The pulverized material is forced out of the mill chamber when it is ground finely enough to pass through the perforations in the mill screen.

Mixing is the most important process in feed milling and is normally a batch process. Ingredients, including those containing chromium compounds and manganese compounds, are weighed on bench or hopper scales before mixing. Mixers may be horizontal or vertical type, using either screws or paddles to move the ingredients.

The material leaving the mixer is meal, or mash, and may be marketed in this form. If pellets are to be made, the meal is conditioned with steam prior to being pelleted. Pelleting is a process in which the conditioned meal is forced through dies. Pellets are usually 3.2 to 19 mm (⅛ to ¾ in.) in diameter. After pelleting, pellets are dried and cooled in pellet coolers. If pellets are to be reduced in size, they are passed through a crumbler, or granulator. This machine is a roller mill with corrugated rolls. Crumbles must be screened to remove fines and oversized materials. The product is sent to storage bins and then bagged or shipped in bulk.

In modern feed mills, transport equipment is often connected with closed spouting and turnheads, covered drag and screw conveyors, and tightly sealed transitions between adjoining equipment to reduce internal dust loss and consequent housekeeping costs. Some older facilities have also upgraded to these closed systems.

Emission sources where chromium compound and manganese compound emissions may occur include handling and storage of these compounds, mixing, storage of the meal or mash, steam conditioning, pelleting and pellet cooling, crumbling and screening, bagging, and bulk shipment loading to trucks or rail cars. Pelleting and pellet cooling is the most significant source of emissions, estimated to emit 90 percent or more of the total chromium compound and manganese compound emissions.

The chromium compounds and manganese compounds emitted comprise a small fraction of the total particulate matter (PM) emissions from prepared feed mills. Fabric filters and cyclones are commonly used to control PM, including the chromium compounds and manganese compounds, from the pelleting and pellet cooling process. These control devices are also used less frequently for other processes at prepared feed mill facilities. For some processes and areas, facilities use the pollution prevention technique of closed loop systems that return collected PM (including chromium compounds and manganese compounds) to the process. We believe that over half of the facilities have these closed loop systems for their mixing/grinding processes and for their conveyers. Common management practices that reduce chromium compound and manganese compound emissions include continual housekeeping to reduce dust that might contain these HAP compounds by vacuuming or sweeping, keeping doors closed to prevent air flow that would ''stir-up'' dust, preventative equipment maintenance, careful handling of chromium- and manganese-containing micronutrients, and the use of devices to reduce emissions during the loading of product on to trucks and railcars.

III. Summary of This Proposed Rule

A. What are the applicability provisions and compliance dates?

The proposed subpart DDDDDDD standards would apply to each new or existing prepared feeds manufacturing facility that is an area source and adds chromium compounds or manganese compounds to any of their products.

All existing area source facilities subject to this proposed rule would be required to comply with the rule requirements no later than two years after the date of publication of the final rule in the **Federal Register**. Based on our assessment, there will be around 32 facilities that will need to evaluate, purchase, and install add-on control equipment for their pelleting operations. We believe that the two-year period provides sufficient time for this to occur. In addition, since the vast majority of the companies in this area source category are small businesses and may not have significant experience complying with federal rules, we believe that this time period would also provide opportunity for all companies to prepare adequately.

A new source is any affected source that commences construction or reconstruction after July 27, 2009. All new sources would be required to comply with the rule requirements by the date of publication of the final rule in the **Federal Register** or upon startup, whichever is later.

B. What are the proposed standards?

The proposed standards include management practices and equipment standards that will reduce emissions of chromium compounds and manganese compounds at prepared feed manufacturing facilities. These practices and standards will also result in reductions of PM and other metal HAP emissions from the affected processes at prepared feed manufacturing facilities.

The proposed requirements, which apply to all new and existing sources, consist of general management practices that apply in all areas of the affected sources and requirements for specific processes or areas of an affected source. One proposed general management practice that would apply to all new and existing sources in all areas of the affected source is minimizing excess dust that could contain chromium compounds or manganese compounds. This would be achieved through practices including, but not limited to, the use of industrial vacuum systems or manual sweeping; monthly dust removal from walls, ledges, and equipment using low pressure air or by other means and then sweeping or vacuuming the area; and by keeping doors shut. The second general management practice is the requirement to maintain and operate all process equipment that stores, processes, or contains chromium compounds or

manganese compounds in a manner to minimize dust creation.

The proposed requirements that would apply to all new and existing sources which are specific to certain areas of the plant or processes are as follows:

- For the storage area, all raw materials containing chromium compounds or manganese compounds must be stored in closed containers.
- For mixing operations, materials containing chromium compounds or manganese compounds must be added to the mixer in a manner to reduce emissions, and the mixer must be covered at all times when mixing is occurring, except when materials are being added.
- For bulk loading operations, filter drop socks must be used when loading product containing chromium compounds or manganese compounds into trucks or railcars.

In addition to the above requirements that apply to all facilities, new and existing facilities with average daily feed production levels exceeding 50 tons per day would be required to install and operate a cyclone to reduce emissions from pelleting and pellet cooling operations. Specifically, the proposed rule would require that emissions of PM that include chromium compounds or manganese compounds would be required to be collected and routed to a cyclone that is designed to achieve at least 95 percent reduction in PM less than 10 microns in diameter (PM10) and that is operated properly and in accordance with the equipment manufacturers specifications.

C. What are the compliance requirements?

For all new and existing sources, compliance with the proposed regulation would be demonstrated through installation of the required equipment, adherence to the management practices, and by keeping the required records and submitting the required notifications and reports described below.

To ensure that the cyclone for the pelleting and pellet cooling process is operated properly at facilities with average daily feed production levels exceeding 50 tons per day, the proposed rule would require that the cyclone be inspected quarterly for corrosion, erosion, or any other damage that could result in air in-leakage, and that the pressure drop be monitored and recorded daily to ensure that it is being operated in accordance with the equipment manufacturer's specifications.

The proposed rule would also require that the filter drop socks on the bulk loading operations be inspected monthly to ensure that they are in good condition.

D. What are the notification, recordkeeping, and reporting requirements?

All new and existing sources would be required to comply with some requirements of the General Provisions (40 CFR part 63, subpart A), which are identified in Table 1 of this proposed rule. The General Provisions include specific requirements for notifications, recordkeeping, and reporting. Each facility would be required to submit an Initial Notification and a one-time Notification of Compliance Status according to the requirements in 40 CFR 63.9 in the General Provisions. The Initial Notification, which would be required to be submitted not later than 120 days after the final rule is published in the **Federal Register**, would contain basic information about the facility and its operations. The Notification of Compliance Status, which would be required to be submitted 120 days after the compliance date, would contain a statement that the source has complied with all relevant standards. It would also be required to include the pressure drop range that constitutes proper operation of the cyclone used to reduce emissions from the pelleting and pellet cooling operations.

The proposed rule would require that records be kept of all notifications. The proposed rule requires that records be kept documenting each cyclone or drop filter sock inspection, and each pressure drop monitoring event. The proposed rule further requires that a record be created monthly that certifies that all management practices have been followed. The records must also include the results of each inspection (including any actions taken in response to findings of the inspections), and each monitoring event. The proposed rule includes the requirement to prepare an annual compliance certification, which would need to be maintained on site. This report would contain a statement whether the source has complied with all relevant standards and other requirements of the final rule. If a deviation from the standard occurred during the annual reporting period, or if an instance occurred where the cyclone pressure drop was outside of the proper operating range submitted in the Notification of Compliance Status report, this information would be required to be included in the annual report and the report would need to be submitted to the EPA Administrator or the designated authority by March 15 of the same year. All records are required to be maintained in a form suitable and readily available for expeditious review, and that they are kept for at least five years, the first two of which must be onsite.

IV. Rationale for This Proposed Rule

A. How did we select the affected source?

Affected source means the collection of equipment and processes in the source category or subcategory to which the subpart applies. The affected source may be the same collection of equipment and processes as the source category or it may be a subset of the source category. We are proposing to designate as the affected source in this area source NESHAP those prepared feeds manufacturing operations that emit chromium compounds and manganese compounds. Specifically, the proposed rule defines the affected source as the collection of all equipment and activities necessary to perform prepared feeds manufacturing operations from the point in the process where chromium compounds or manganese compounds are added to the point where the finished prepared feed product leaves the facility. This includes, but is not limited to, areas where materials containing chromium compounds and manganese compounds are stored and areas where the chromium compounds and manganese compounds are temporarily stored prior to addition to the feed at the mixer, as well as mixing and grinding processes, pelleting and pellet cooling processes, packing and bagging processes, crumblers and screens, bulk loading operations, and all conveyors and other equipment that transfer the feed materials throughout the manufacturing facility.

B. How did we ensure that the listed HAP are addressed by this rule?

In selecting the proposed emission standards, we are using PM as a surrogate for chromium compounds and manganese compounds. A sufficient correlation exists between PM and chromium compounds and manganese compounds to rely on PM as a surrogate for these HAP and for their control. When released, chromium compounds and manganese compounds are in particle form and behave as PM. The control technologies used for the control of PM emissions achieve comparable levels of performance on chromium compounds and manganese compounds emissions. Therefore, standards requiring good control of PM also

achieve good control of chromium compounds and manganese compounds. Furthermore, establishing chromium compound and manganese compound standards would impose costly and significantly more complex compliance and monitoring requirements and achieve little, if any, HAP emissions reductions beyond what would be achieved using an approach based on total PM control. Therefore, we decided to propose standards for prepared feeds manufacturing based on control of PM as a surrogate pollutant for chromium compounds and manganese compounds.

C. How did we subcategorize the Prepared Feeds Manufacturing source category?

As part of the GACT analysis, we considered whether there were differences in processes, sizes, or other factors affecting emissions and control technologies that would warrant subcategorization of the Prepared feeds manufacturing area source category. Under section 112(d)(1) of the CAA, EPA ''may distinguish among classes, types, and sizes within a source category or subcategory in establishing such standards''. In our review of available data, we observed differences between prepared feeds manufacturing facilities based on production levels. We estimate that the emissions for a typical small facility are only around 10 percent of the level of emissions at a typical larger facility.[1] There are also considerable differences in the emission stream flow rates at larger facilities, as they are, on average, around five times greater than the flow rates at the smaller facilities.[2] Based on these differences, we determined that subcategorization of the Prepared Feeds Manufacturing source category was justified. Consequently, we are proposing to subcategorize the Prepared Feeds Manufacturing source category into ''small'' and ''large'' facilities. The proposed threshold that we selected to distinguish between large and small facilities is a prepared feeds manufacturing rate of 50 tons per day, which as the record demonstrates, represents the characteristics mentioned above. We are specifically requesting comment on whether this production rate is the most appropriate level to define the differences between the small and large prepared feeds manufacturing subcategories.

D. How did we determine GACT?

As provided in CAA section 112(d)(5), we are proposing standards representing GACT for the prepared feeds manufacturing source HAP emissions. As noted in section II.A of this preamble, the statute allows the Agency to establish standards for area sources listed pursuant to section 112(c) based on GACT. The statute does not set any condition precedent for issuing standards under section 112(d)(5) other than that the area source category or subcategory at issue must be one that EPA listed pursuant to section 112(c), which is the case here.

As noted above, we solicited information on the available controls and management practices for this area source category using written facility surveys, reviews of published literature, and reviews of operating permits. We also held discussions with trade association and industry representatives. Our determination of GACT is based on this information. We also considered costs and economic impacts in determining GACT.

We identified two general management practices that reduce chromium compound and manganese compound emissions for all processes and in all areas of small and large prepared feed manufacturing facilities. The first were continual housekeeping practices to reduce dust that can contain chromium compounds and manganese compounds. Examples of these housekeeping practices include removing dust with industrial vacuum systems or by manual sweeping; periodically removing dust from walls, ledges, and equipment using low pressure air or by other means and then sweeping or vacuuming the area; and keeping doors closed to avoid spreading dust throughout the facility. The second management practice identified was the proper maintenance and operation of all process equipment that stores, processes, or contains chromium compounds or manganese compounds to minimize dust creation.

We believe that every prepared feed facility already employs these practices. Therefore, the proposed rule includes these general practices as GACT for small and large prepared feeds manufacturing facilities. We are, however, requesting comment on the particular requirements listed above under the first management practice (vacuuming/sweeping, removing dust from walls, etc., and keeping doors closed). Specifically, we would like to know if there are additional general management practices that are commonly used throughout prepared feeds manufacturing facilities that should be included in this list of requirements. We are also asking for specific maintenance activities and operational practices that would be appropriate to include that would strengthen the second general management practice.

In addition, we evaluated other process-specific or area-specific measures and controls in our analysis. The following discussion is organized according to these processes/areas.

Storage Areas. For those facilities that provided information on the area where micronutrients containing chromium compounds and manganese compounds are stored, 100 percent of both large and small prepared feeds manufacturing facilities reported that these materials were stored in closed containers. There were no other measures or controls reported. Therefore, in addition to the general requirements to minimize dust and maintain equipment throughout the facility, we determined that GACT for the storage areas at small and large facilities included the requirement that any raw materials containing chromium compounds or manganese compounds be stored in closed containers.

Mixing Processes. Facilities routinely are careful to minimize losses during the mixing process of the expensive micronutrients that contain chromium compounds and manganese compounds. This also minimizes chromium compound and manganese compound emissions. The measures employed include adding materials carefully and keeping the mixer covered after they are added when mixing is occurring. We believe that every prepared feed facility employs these practices and that they represent GACT.

In addition, control devices to reduce emissions from mixing operations were reported in a few instances (24 percent of facilities surveyed). We estimated the cost effectiveness of requiring the uncontrolled mixing operations to install add-on controls at small prepared feeds manufacturing facilities to be around $127 million per ton of chromium compound and manganese compound emission reduction and $380,000 and $1.6 million per ton of PM and $PM_{2.5}$, respectively. For the larger facilities, we estimated the cost effectiveness to be around $18 million per ton of chromium and manganese compound emission reduction, $55,000 per ton of PM reduction, and $240,000 per ton of $PM_{2.5}$ reduction. Because only a minority of facilities have installed these control devices and because the

[1] Memorandum. Jones, N. and Norwood, P., EC/R Incorporated, to King, J., EPA/OAQPS/OID. Baseline Emissions for the Prepared Feeds Manufacturing Area Source Category. February 27, 2009.

[2] Memorandum. Jones, N. and Norwood, P., EC/R Incorporated, to King, J., EPA/OAQPS/OID. Summary of Information Obtained from Industry Survey for the Prepared Feeds Manufacturing Area Source Category. February 27, 2009.

cost effectiveness is higher than we generally consider reasonable, we are not proposing that add-on control represents GACT for mixing operations. Therefore, in addition to the general requirements to minimize dust and maintain equipment throughout the facility, we are proposing that GACT for the mixing processes at small and large prepared feeds manufacturing facilities include the requirements to (1) add materials containing chromium compounds or manganese compounds to the mixer in a manner that minimizes emissions, and (2) cover the mixer at all times when materials containing chromium compounds or manganese compounds are being used. We are asking for comment on specific measures that would be appropriate to include to strengthen the proposed requirement to minimize emissions when materials are being added to the mixer.

Pelleting and pellet cooling. For pelleting and pellet cooling processes, add-on controls were reported for almost 98 percent of the larger facilities, but only around 20 percent of the smaller facilities For the larger facilities, we estimated that requiring the additional 2 percent of the larger facilities to install cyclones would cost around $300,000 per ton of chromium compound and manganese compound reduction, $1,000 per ton of PM emission reduction, and $4,000 per ton of $PM_{2.5}$ reduction. We concluded that these costs were reasonable in consideration of the emission reductions achieved, and determined that the use of cyclones to reduce emissions from pelleting cooling operations was GACT for large prepared feeds manufacturing facilities. Therefore, in addition to the general requirements to minimize dust and maintain equipment throughout the facility, we are proposing that GACT for large prepared feeds manufacturing facilities include the requirements that all chromium compound and manganese compound emissions from pelleting and pellet cooling operations must be captured and routed to a cyclone. The information provided via the industry survey did not include specific details about the performance of these cyclones, but we believe that properly designed cyclones should be able to achieve 95 percent reduction in PM emissions. This belief is based on follow-up of the survey responses and information obtained from cyclone vendors. Therefore, we are proposing that the cyclones be designed to achieve at least 95 percent reduction in PM10. We are specifically requesting comment on this 95 percent efficiency requirement. In addition, we are requesting comment on whether control devices other than cyclones are used to reduce PM emissions from pelleting and pellet cooling. If other devices are used, we would request information that demonstrates that these devices are at least equivalent to the required cyclones, and the monitoring techniques utilized to ensure that they are operating properly.

We also evaluated the impacts of requiring the installation of cyclones at all facilities in the small prepared feeds manufacturing subcategory. As noted above, the available information suggests that around 80 percent of these smaller facilities do not control PM emissions from their pelleting and pellet cooling process. We estimated the cost effectiveness to be around $1 million per ton of chromium and manganese compound emission reduction, $4,000 per ton of PM emission reduction, and $20,000 per ton of $PM_{2.5}$ reduction. We estimated that the annual cost of installing and operating a cyclone at one of these small facilities would be around $58,000 per year. Our economic impacts assessment indicates that annual costs of this magnitude could represent over 5 percent of the total annual sales for a smaller prepared feeds manufacturing facility. We concluded that the adverse economic impacts do not justify a determination requiring cyclones for the small prepared feeds manufacturing subcategory. Therefore, we are proposing that GACT for small prepared feeds manufacturing facilities as only the general management practices to minimize dust and maintain equipment.

Bagging. The information provided by facilities also indicated that add-on controls, primarily fabric filters, are used to reduce emissions from bagging operations at prepared feeds manufacturing facilities. The available information suggests that around ⅓ of the smaller facilities and over 90 percent of the larger facilities control the emissions from the bagging processes. We evaluated the impacts of the installation and operation of fabric filters at the remaining facilities, and estimated that, for the smaller facilities, the total capital costs would be over $7 million and the total annual costs would be over $16 million per year. Since bagging is a relatively small source of emissions, the cost effectiveness for these controls would be around $255 million per ton of chromium and manganese compound reduction, over $750,000 per ton of PM emission reduction, and $3.3 million per ton of $PM_{2.5}$ reduction. We concluded that these cost effectiveness values were too high to be considered GACT. Therefore, for bagging operations at smaller prepared feeds manufacturing facilities, the proposed rule would require that the general requirements to minimize dust and maintain equipment throughout the facility be followed, but would not require the installation and operation of add-on control.

For the larger facilities, we estimated that the total capital costs would be over $10 million and the total annual costs would be over $13 million per year. The cost effectiveness for these controls at these larger facilities would be around $37 million per ton of chromium and manganese compound reduction, over $100,000 per ton of PM emission reduction, and around $500,000 per ton of $PM_{2.5}$ reduction. We concluded that, although a significant portion of the existing large facilities control emissions from bagging, these cost effectiveness values were too high to be considered GACT. Therefore, for bagging operations at larger prepared feeds manufacturing facilities, the proposed rule would also only require that the general requirements to minimize dust and maintain equipment throughout the facility be followed.

Bulk loading. Based on the industry surveys, we believe that every facility uses drop filter socks to reduce dust and the loss of product during the loading of railcars and trucks. We determined that this equipment represents GACT for bulk loading operations at both small and large facilities. Therefore, in addition to the general requirements to minimize dust and maintain equipment throughout the facility, we are proposing that GACT for bulk loading include the requirement to install drop filter socks for small and large prepared feeds manufacturing facilities.

E. How did we select the compliance requirements?

In order to ensure that the cyclones on the pelleting and pellet cooling operations remain effective in reducing chromium compounds and manganese compounds, we are proposing that these cyclones be operated and maintained in accordance with the manufacturer's specifications. We are also proposing that these cyclones be inspected monthly and that the pressure drop be monitored daily and recorded. Similarly, we are requiring that the drop filter socks on the bulk loading operations be inspected monthly to ensure they are in good condition and functioning properly.

We are proposing certain notification, recordkeeping, and reporting requirements. Those requirements are described in detail in section III.D. In

selecting these requirements, we identified the information necessary to ensure that management practices are being followed and that emission control devices and equipment are maintained and operated properly. The proposed requirements ensure compliance with this proposed rule without posing a significant additional burden for facilities that must implement them.

F. How did we decide to exempt this area source category from Title V permit requirements?

We are proposing exemption from title V permitting requirements for affected sources in the prepared feeds manufacturing area source category for the reasons described below.

Section 502(a) of the CAA provides that the Administrator may exempt an area source category from title V if he determines that compliance with title V requirements is ''impracticable, infeasible, or unnecessarily burdensome'' on an area source category. See CAA section 502(a). In December 2005, in a national rulemaking, EPA interpreted the term ''unnecessarily burdensome'' in CAA section 502 and developed a four-factor balancing test for determining whether title V is unnecessarily burdensome for a particular area source category, such that an exemption from title V is appropriate. See 70 FR 75320, December 19, 2005 (''Exemption Rule'').

The four factors that EPA identified in the Exemption Rule for determining whether title V is ''unnecessarily burdensome'' on a particular area source category include: (1) Whether title V would result in significant improvements to the compliance requirements, including monitoring, recordkeeping, and reporting, that are proposed for an area source category (70 FR 75323); (2) whether title V permitting would impose significant burdens on the area source category and whether the burdens would be aggravated by any difficulty the sources may have in obtaining assistance from permitting agencies (70 FR 75324); (3) whether the costs of title V permitting for the area source category would be justified, taking into consideration any potential gains in compliance likely to occur for such sources (70 FR 75325); and (4) whether there are implementation and enforcement programs in place that are sufficient to assure compliance with the NESHAP for the area source category, without relying on title V permits (70 FR 75326).

In discussing these factors in the Exemption Rule, we further explained that we considered on ''a case-by-case basis the extent to which one or more of the four factors supported title V exemptions for a given source category, and then we assessed whether considered together those factors demonstrated that compliance with title V requirements would be 'unnecessarily burdensome' on the category, consistent with section 502(a) of the Act.'' See 70 FR 75323. Thus, in the Exemption Rule, we explained that not all of the four factors must weigh in favor of exemption for EPA to determine that title V is unnecessarily burdensome for a particular area source category. Instead, the factors are to be considered in combination, and EPA determines whether the factors, taken together, support an exemption from title V for a particular source category.

In the Exemption Rule, in addition to determining whether compliance with title V requirements would be unnecessarily burdensome on an area source category, we considered, consistent with the guidance provided by the legislative history of section 502(a), whether exempting the area source category would adversely affect public health, welfare or the environment. See 70 FR 15254–15255, March 25, 2005. As explained below, we propose that title V permitting is unreasonably burdensome for the area source category at issue in this proposed rule. We have also determined that the proposed exemptions from title V would not adversely affect public health, welfare and the environment. Our rationale for this decision follows here.

In considering the exemption from title V requirements for sources in the category affected by this proposed rule, we first compared the title V monitoring, recordkeeping, and reporting requirements (factor one) to the requirements in the proposed NESHAP for the area source category. The proposed rule requires implementation of certain management practices and the use of add on controls for one process. We believe these practices are currently used at all facilities and the controls are in use at most facilities. The proposed rule requires direct monitoring of control device parameters, recordkeeping that also may serve as monitoring, and deviation and other annual reporting to assure compliance with these requirements.

The monitoring component of the first factor favors title V exemption. For the management practices, this proposed standard provides monitoring in the form of recordkeeping that would assure compliance with the requirements of the proposed rule. Monitoring by means other than recordkeeping for the management practices is not practical or appropriate. Records are required to ensure that the management practices are followed. The rule requires continuous parameter monitoring and periodic recording of the parameter for the required control device to assure compliance. The proposed rule requires the owner or operator to record the date and results of periodic control device inspections, as well as any actions taken in response to findings of the inspections. The records are required to be maintained in a form suitable and readily available for expeditious review, and that they are kept for at least five years, the first two of which must be onsite.

As part of the first factor, in addition to monitoring, we considered the extent to which title V could potentially enhance compliance for area sources covered by this proposed rule through recordkeeping or reporting requirements. We have considered the various title V recordkeeping and reporting requirements, including requirements for a 6-month monitoring report, deviation reports, and an annual certification in 40 CFR 70.6 and 71.6.

For any prepared feeds manufacturing area source, this proposed NESHAP requires an Initial Notification and a Notification of Compliance Status. This proposed rule also requires facilities to certify compliance with the control device and management practices. In addition, facilities must maintain records showing compliance through the required parameter monitoring and deviation requirements. The information required in the deviation reports is similar to the information that must be provided in the deviation reports required under 40 CFR 70.6(a)(3) and 40 CFR 71.6(a)(3).

We acknowledge that title V might impose additional compliance requirements on this category, but we have determined that the monitoring, recordkeeping and reporting requirements of the proposed NESHAP are sufficient to assure compliance with the provisions of the NESHAP, and title V would not significantly improve those compliance requirements.

For the second factor, we determine whether title V permitting would impose a significant burden on the area sources in the category and whether that burden would be aggravated by any difficulty the source may have in obtaining assistance from the permitting agency. Subjecting any source to title V permitting imposes certain burdens and costs that do not exist outside of the title V program. EPA estimated that the average cost of obtaining and complying with a title V permit was $38,500 per

source for a 5-year permit period, including fees. See Information Collection Request for Part 70 Operating Permit Regulations, January 2000, EPA ICR Number 1587.05. EPA does not have specific estimates for the burdens and costs of permitting these types of prepared feeds manufacturing area sources; however, there are certain activities associated with the part 70 and 71 rules. These activities are mandatory and impose burdens on any facility subject to title V. They include reading and understanding permit program guidance and regulations; obtaining and understanding permit application forms; answering follow-up questions from permitting authorities after the application is submitted; reviewing and understanding the permit; collecting records; preparing and submitting monitoring reports on a 6-month or more frequent basis; preparing and submitting prompt deviation reports, as defined by the State, which may include a combination of written, verbal, and other communications methods; collecting information, preparing, and submitting the annual compliance certification; preparing applications for permit revisions every 5 years; and, as needed, preparing and submitting applications for permit revisions. In addition, although not required by the permit rules, many sources obtain the contractual services of consultants to help them understand and meet the permitting program's requirements. The ICR for part 70 provides additional information on the overall burdens and costs, as well as the relative burdens of each activity described here. Also, for a more comprehensive list of requirements imposed on part 70 sources (hence, burden on sources), see the requirements of 40 CFR 70.3, 70.5, 70.6, and 70.7.

In assessing the second factor for facilities affected by this proposal, we found that many of the facilities that would be affected by this proposed rule are small entities. These small sources lack the technical resources that would be needed to comply with permitting requirements and the financial resources that would be needed to hire the necessary staff or outside consultants. As discussed above, title V permitting would impose significant costs on these area sources, and, accordingly, we conclude that title V is a significant burden for sources in this category. Furthermore, given the number of sources in the category, it would likely be difficult for them to obtain sufficient assistance from the permitting authority. Thus, we conclude that factor two supports title V exemption for this category.

The third factor, which is closely related to the second factor, is whether the costs of title V permitting for these area sources would be justified, taking into consideration any potential gains in compliance likely to occur for such sources. We explained above under the second factor that the costs of compliance with title V would impose a significant burden on many of the approximately 450 facilities affected by the proposed rule. We also concluded in considering the first factor that, while title V might impose additional requirements, the monitoring, recordkeeping and reporting requirements in the proposed NESHAP assure compliance with the emission standards imposed in the NESHAP. In addition, below in our consideration of the fourth factor, we find that there are adequate implementation and enforcement programs in place to assure compliance with the NESHAP. Because the costs, both economic and non-economic, of compliance with title V are high, and the potential for gains in compliance is low, title V permitting is not justified for this source category. Accordingly, the third factor supports title V exemptions for this area source category.

The fourth factor we considered in determining if title V is unnecessarily burdensome is whether there are implementation and enforcement programs in place that are sufficient to assure compliance with the NESHAP without relying on title V permits. EPA has implemented regulations that provide States the opportunity to take delegation of area source NESHAP, and we believe that State delegated programs are sufficient to assure compliance with this NESHAP. See 40 CFR part 63, subpart E (States must have adequate programs to enforce the section 112 regulations and provide assurances that they will enforce the NESHAP before EPA will delegate the program).

We also noted that EPA retains authority to enforce this NESHAP anytime under CAA sections 112, 113 and 114. Also, States and EPA often conduct voluntary compliance assistance, outreach, and education programs (compliance assistance programs), which are not required by statute. We determined that these additional programs will supplement and enhance the success of compliance with these proposed standards. We believe that the statutory requirements for implementation and enforcement of this NESHAP by the delegated States and EPA and the additional assistance programs described above together are sufficient to assure compliance with these proposed standards without relying on title V permitting.

In light of all the information presented here, we believe that there are implementation and enforcement programs in place that are sufficient to assure compliance with the proposed standards without relying on title V permitting.

Balancing the four factors for this area source category strongly supports the proposed finding that title V is unnecessarily burdensome. While title V might add additional compliance requirements if imposed, we believe that there would not be significant improvements to the compliance requirements in this proposed rule because the proposed rule requirements are specifically designed to assure compliance with the emission standards imposed on this area source category. We further maintain that the economic and non-economic costs of compliance with title V would impose a significant burden on the sources. We determined that the high relative costs would not be justified given that there is likely to be little or no potential gain in compliance if title V were required. And, finally, there are adequate implementation and enforcement programs in place to assure compliance with these proposed standards. Thus, we propose that title V permitting is ''unnecessarily burdensome'' for this area source category.

In addition to evaluating whether compliance with title V requirements is ''unnecessarily burdensome'', EPA also considered, consistent with guidance provided by the legislative history of section 502(a), whether exempting this area source category from title V requirements would adversely affect public health, welfare, or the environment. Exemption of this area source category from title V requirements would not adversely affect public health, welfare, or the environment because the level of control would remain the same if a permit were required. The title V permit program does not impose new substantive air quality control requirements on sources, but instead requires that certain procedural measures be followed, particularly with respect to determining compliance with applicable requirements. As stated in our consideration of factor one for this category, title V would not lead to significant improvements in the compliance requirements applicable to existing or new area sources.

Furthermore, we explained in the Exemption Rule that requiring permits

for the large number of area sources could, at least in the first few years of implementation, potentially adversely affect public health, welfare, or the environment by shifting State agency resources away from assuring compliance for major sources with existing permits to issuing new permits for these area sources, potentially reducing overall air program effectiveness. Based on the above analysis, we conclude that title V exemptions for these area sources will not adversely affect public health, welfare, or the environment for all of the reasons explained above.

For the reasons stated here, we are proposing to exempt this area source category from title V permitting requirements.

V. Summary of Impacts of the Proposed Standards

We project that the baseline PM emissions from the estimated 1,800 facilities in the prepared feeds source category are around 32,000 tons/yr, with around 7,500 tons/yr of $PM_{2.5}$, 100 tons/yr of manganese compounds and just under 2 tons/yr of chromium compounds. We believe that the management practices in the proposed rule are already being implemented throughout the industry. Therefore, we do not expect any additional reductions in chromium compound, manganese compound, or general PM emissions from these measures. We estimate that the requirement to install cyclones on the pelleting processes at the facilities with daily production levels exceeding 50 tons per day will result in emission reductions of around 4,000 tons/yr of PM, 900 tons/yr of $PM_{2.5}$, and around 11 tons/yr of manganese compounds and chromium compounds emissions. While cyclones do remove PM from the air stream, these solids are typically recycled back to the process. Therefore, we do not anticipate any significant indirect or secondary air impacts of this rule as proposed. In addition, we do not expect any non-air health, environmental, or energy impacts.

As noted above, we believe all prepared feed manufacturing facilities already implement the proposed management practices. Therefore, there will be no additional costs for these measures. We estimate that the nationwide capital costs for the installation of cyclones on the pelleting cooling operations at the large facilities will be just over $3 million. The associated annual costs are estimated to be just under $4 million/year.

Many of the plants in this analysis have fewer than 500 employees, which is the threshold to be considered ''small'' by the Small Business Administration. It is currently estimated only around 2 percent of the facilities in the category would potentially need to change under the proposed regulatory alternative. The potential impact on the industry as a percentage of the value of shipments is small. Under the proposed regulatory alternative, the largest potential impact is estimated as 0.96 percent of shipments for a subset of firms with an overall impact of 0.94 percent of shipments for the industry as a whole. As a result, this action is not expected to have a significant impact on a substantial number of small entities or the economy as a whole, regardless of whether or not the firms in the industry are able to pass along any increases in their costs to the consumers.

VI. Statutory and Executive Order Reviews

A. Executive Order 12866: Regulatory Planning and Review

Under Executive Order 12866 (58 FR 51735, October 4, 1993), this action is a ''significant regulatory action'' because it may raise novel legal or policy issues. Accordingly, EPA submitted this action to the OMB for review under Executive Order 12866 and any changes made in response to OMB recommendations have been documented in the docket for this action.

B. Paperwork Reduction Act

The information collection requirements in this proposed rule have been submitted for approval to OMB under the *Paperwork Reduction Act,* 44 U.S.C. 3501 *et seq.* The Information Collection Request (ICR) document prepared by EPA has been assigned EPA ICR number 2354.01.

The recordkeeping and reporting requirements in this proposed rule are based on the requirements in EPA's NESHAP General Provisions (40 CFR part 63, subpart A). The recordkeeping and reporting requirements in the General Provisions are mandatory pursuant to section 114 of the CAA (42 U.S.C. 7414). All information other than emissions data submitted to EPA pursuant to the information collection requirements for which a claim of confidentiality is made is safeguarded according to CAA section 114(c) and the Agency's implementing regulations at 40 CFR part 2, subpart B.

This proposed NESHAP would require prepared feeds manufacturing area sources to submit an Initial Notification and a Notification of Compliance Status according to the requirements in 40 CFR 63.9 of the General Provisions (subpart A). Records would be required to demonstrate compliance with the monitoring and management practice requirements that ensure good operation and maintenance of capture and control devices. The owner or operator of a prepared feeds manufacturing facility also is subject to notification and recordkeeping requirements in 40 CFR 63.9 and 63.10 of the General Provisions (subpart A), although we are proposing that annual compliance reports are sufficient instead of semiannual reports.

The annual burden for this information collection averaged over the first three years of this ICR is estimated to be a total of 27,000 labor hours per year at a cost of approximately $2.1 million or $1,200 per facility. The average annual reporting burden is 0.6 hours per response, with approximately 2 responses per facility. The only capital and operating and maintenance costs are associated with the installation of monitoring equipment on cyclones required to control pelleting emissions at the larger prepared feeds manufacturing facilities. Burden is defined at 5 CFR 1320.3(b).

An agency may not conduct or sponsor, and a person is not required to respond to, a collection of information unless it displays a currently valid OMB control number. The OMB control numbers for EPA's regulations in 40 CFR are listed in 40 CFR part 9.

To comment on the Agency's need for this information, the accuracy of the provided burden estimates, and any suggested methods for minimizing respondent burden, EPA has established a public docket for this rule, which includes this ICR, under Docket ID number [EPA–HQ–OAR–2008–0080]. Submit any comments related to the ICR to EPA and OMB. See **ADDRESSES** section at the beginning of this proposed rule for where to submit comments to EPA. Send comments to OMB at the Office of Information and Regulatory Affairs, Office of Management and Budget, 725 17th Street, NW., Washington, DC 20503, Attention: Desk Office for EPA. Since OMB is required to make a decision concerning the ICR between 30 and 60 days after July 27, 2009, a comment to OMB is best assured of having its full effect if OMB receives it by August 26, 2009. The final rule will respond to any OMB or public comments on the information collection requirements contained in this proposal.

C. Regulatory Flexibility Act

The Regulatory Flexibility Act generally requires an agency to prepare a regulatory flexibility analysis of any rule subject to notice and comment rulemaking requirements under the

Administrative Procedure Act or any other statute unless the agency certifies that the rule would not have a significant economic impact on a substantial number of small entities. Small entities include small businesses, small not-for-profit enterprises, and small governmental jurisdictions.

For the purposes of assessing the impacts of this proposed rule on small entities, small entity is defined as: (1) A small business that meets the Small Business Administration size standards for small businesses found at 13 CFR 121.201 (less than 500 employees for NAICS 311119); (2) a small governmental jurisdiction that is a government of a city, county, town, school district, or special district with a population of less than 50,000; and (3) a small organization that is any not-for-profit enterprise which is independently owned and operated and is not dominant in its field.

After considering the economic impacts of this proposed rule on small entities, I certify that this action will not have a significant economic impact on a substantial number of small entities. This proposed rule is estimated to impact 1,800 prepared feed manufacturing facilities that are currently operating. We estimate that all of these facilities may be small entities. We have determined that small entity compliance costs, as assessed by the facilities' cost-to-sales ratio, are expected to be less than 0.004 percent. The costs are so small that the impact is not expected to be significant. The impact on small entities is significantly decreased since the proposed rule would not require plants with daily production levels less than 50 tons per day to install add-on controls. Although this proposed rule contains requirements for new area sources, we are not aware of any new area sources being constructed now or planned in the next 3 years, and consequently, we did not estimate any impacts for new sources.

Although this proposed rule will not have a significant economic impact on a substantial number of small entities, EPA nonetheless has tried to reduce the impact of this proposed rule on small entities. The standards represent practices and controls that are common throughout the prepared feeds manufacturing industry. The standards also require only the essential recordkeeping and reporting needed to demonstrate and verify compliance. These standards were developed based on information obtained from small businesses in our surveys, consultation with small business representatives on the state and national level, and industry representatives that are affiliated with small businesses.

We continue to be interested in the potential impacts of this proposed action on small entities and welcome comments on issues related to such impacts.

D. Unfunded Mandates Reform Act

This action contains no Federal mandates under the provisions of Title II of the Unfunded Mandates Reform Act of 1995 (UMRA), 2 U.S.C. 1531–1538 for State, local, and tribal governments or the private sector. This action imposes no enforceable duty on any State, local, tribal governments or the private sector.

This action is also not subject to the requirements of section 203 of UMRA because it contains no regulatory requirements that might significantly or uniquely affect small governments. The proposed rules contain no requirements that apply to such governments, and impose no obligations upon them.

E. Executive Order 13132: Federalism

Executive Order 13132 (64 FR 43255, August 10, 1999) requires EPA to develop an accountable process to ensure ''meaningful and timely input by state and local officials in the development of regulatory policies that have federalism implications.'' ''Policies that have federalism implications'' is defined in the Executive Order to include regulations that have ''substantial direct effects on the states, on the relationship between the national government and the states, or on the distribution of power and responsibilities among the various levels of government.''

This proposed rule does not have federalism implications. It will not have substantial direct effects on the states, on the relationship between the national government and the states, or on the distribution of power and responsibilities among the various levels of government, as specified in Executive Order 13132. This proposed rule does not impose any requirements on state and local governments. Thus, Executive Order 13132 does not apply to this proposed rule.

In the spirit of Executive Order 13132, and consistent with EPA policy to promote communications between EPA and state and local governments, EPA specifically solicits comment on this proposed rule from state and local officials.

F. Executive Order 13175: Consultation and Coordination With Indian Tribal Governments

This action does not have tribal implications, as specified in Executive Order 13175 (65 FR 67249, November 9, 2000). This action would not have substantial direct effects on tribal governments, on the relationship between the Federal government and Indian tribes, or on the distribution of power and responsibilities between the Federal government and Indian tribes. The action imposes requirements on owners and operators of specified area sources and not tribal governments. Thus, Executive Order 13175 does not apply to this action.

EPA specifically solicits additional comment on this proposed action from tribal officials.

G. Executive Order 13045: Protection of Children From Environmental Health and Safety Risks

EPA interprets Executive Order 13045 (62 F.R. 19885, April 23, 1997) as applying to those regulatory actions that concern health or safety risks, such that the analysis required under section 5–501 of the Order has the potential to influence the regulation. This proposed rule is not subject to Executive Order 13045 because it is based solely on technology performance.

H. Executive Order 13211: Actions Concerning Regulations That Significantly Affect Energy Supply, Distribution, or Use

This action is not a ''significant energy action'' as defined in Executive Order 13211 (66 FR 28355, May 22, 2001) because it is not likely to have a significant adverse effect on the supply, distribution, or use of energy. Further, we have concluded that this proposed rule would not likely have any significant adverse energy impacts.

I. National Technology Transfer Advancement Act

Section 12(d) of the National Technology Transfer and Advancement Act of 1995 (''NTTAA''), Public Law 104–113, 12(d) (15 U.S.C. 272 note) directs EPA to use voluntary consensus standards in its regulatory activities unless to do so would be inconsistent with applicable law or otherwise impractical. Voluntary consensus standards are technical standards (e.g., materials specifications, test methods, sampling procedures, and business practices) that are developed or adopted by voluntary consensus standards bodies. NTTAA directs EPA to provide Congress, through OMB, explanations when the Agency decides not to use

available and applicable voluntary consensus standards.

This proposed rulemaking does not involve technical standards. Therefore, EPA is not considering the use of any voluntary consensus standards.

EPA welcomes comments on this aspect of the proposed rulemaking and, specifically, invites the public to identify potentially-applicable voluntary consensus standards and to explain why such standards should be used in this regulation.

J. Executive Order 12898: Federal Actions To Address Environmental Justice in Minority Populations and Low-Income Populations

Executive Order 12898 (59 FR 7629, February 16, 1994) establishes federal executive policy on environmental justice. Its main provision directs federal agencies, to the greatest extent practicable and permitted by law, to make environmental justice part of their mission by identifying and addressing, as appropriate, disproportionately high and adverse human health or environmental effects of their programs, policies, and activities on minority populations and low-income populations in the United States.

EPA has determined that this proposed rule will not have disproportionately high and adverse human health or environmental effects on minority or low-income populations because it increases the level of environmental protection for all affected populations without having any disproportionately high and adverse human health or environmental effects on any population, including any minority or low-income population. This proposed rule will establish national standards for the prepared feeds manufacturing area source category.

List of Subjects in 40 CFR Part 63

Environmental protection, Air pollution control, Hazardous substances, Reporting and recordkeeping requirements.

Dated: July 21, 2009.

Lisa P. Jackson,

Administrator.

For the reasons stated in the preamble, title 40, chapter I, part 63 of the Code of Federal Regulations is proposed to be amended as follows:

PART 63—[AMENDED]

1. The authority citation for part 63 continues to read as follows:

Authority: 42 U.S.C. 7401 *et seq.*

2. Part 63 is amended by adding subpart DDDDDDD to read as follows:

Subpart DDDDDDD—National Emission Standards for Hazardous Air Pollutants for Area Sources: Prepared Feeds Manufacturing

Applicability and Compliance Dates

Sec.

Standards, Monitoring, and Compliance Requirements

Other Requirements and Information

Tables to Subpart DDDDDDD of Part 63

Subpart DDDDDDD—National Emission Standards for Hazardous Air Pollutants for Area Sources: Prepared Feeds Manufacturing

Applicability and Compliance Dates

§ 63.11619 Am I subject to this subpart?

(a) You are subject to this subpart if you own or operate a prepared feed manufacturing facility that uses chromium compounds or manganese compounds and is an area source of emissions of these hazardous air pollutants (HAP).

(b) The provisions of this subpart apply to each new and existing prepared feed manufacturing facility affected source. A prepared feeds manufacturing affected source is the collection of all equipment and activities necessary to perform prepared feeds manufacturing operations from the point in the process where chromium compounds or manganese compounds are added to the point where the finished prepared feed product leaves the facility. This includes, but is not limited to, areas where materials containing chromium compounds and manganese compounds are stored, areas where the chromium compounds and manganese compounds are temporarily stored prior to addition to the feed at the mixer, mixing and grinding processes, pelleting and pellet cooling processes, packing and bagging processes, crumblers and screens, bulk loading operations, and all conveyors and other equipment that transfer the feed materials throughout the manufacturing facility.

(c) A prepared feed manufacturing facility affected source exists if you commenced construction or reconstruction of the facility on or before July 27, 2009.

(d) A prepared feed manufacturing facility affected source is new if you commenced construction or reconstruction of the facility after July 27, 2009.

(e) This subpart does not apply to the facilities identified in paragraphs (e)(1) and (2) of this section.

(1) Prepared feed manufacturing facilities that do not add any materials containing chromium compounds or manganese compounds to any product manufactured at the facility.

(2) Research or laboratory facilities as defined in section 112(c)(7) of the Clean Air Act (CAA).

(f) You are exempt from the obligation to obtain a permit under 40 CFR part 70 or 40 CFR part 71, provided you are not otherwise required by law to obtain a permit under 40 CFR 70.3(a) or 40 CFR 71.3. Notwithstanding the previous sentence, you must continue to comply with the provisions of this subpart.

§ 63.11620 What are my compliance dates?

(a) If you own or operate an existing affected source, you must achieve compliance with the applicable provisions of this subpart by no later than two years after the date of publication of the final rule in the **Federal Register**.

(b) If you start up a new affected source on or before the date of publication of the final rule in the **Federal Register**, you must achieve compliance with the applicable provisions of this subpart by no later than the date of publication of the final rule in the **Federal Register**.

(c) If you start up a new affected source after the date of publication of the final rule in the **Federal Register**, you must achieve compliance with the applicable provisions of this subpart upon startup of your affected source.

Standards, Monitoring, and Compliance Requirements

§ 63.11621 What are the standards for new and existing prepared feed manufacturing facilities?

You must comply with the management practices and standards in

paragraphs (a) through (f) of this section at all times.

(a) In all areas of the affected source, you must comply with the management practices in paragraphs (a)(1) and (2) of this section.

(1) You must perform housekeeping measures to minimize excess dust. These measures must include, but not be limited to, the practices specified in paragraphs (a)(1)(i) through (iii) of this section.

(i) You must use either an industrial vacuum system or manual sweeping to reduce the amount of dust,

(ii) At least once per month, you must remove dust from walls, ledges, and equipment using low pressure air or by other means, and then sweep or vacuum the area.

(iii) You must keep doors shut, as practicable.

(2) You must maintain and operate all process equipment in a manner to minimize dust creation.

(b) You must store any raw materials containing chromium compounds or manganese compounds in closed containers.

(c) The mixer where materials containing chromium compounds or manganese compounds are added must be covered at all times when mixing is occurring, except when the materials are being added to the mixer. Materials containing chromium compounds or manganese compounds must be added to the mixer in a manner that minimizes emissions.

(d) For the bulk loading process where prepared feed products are loaded into trucks or railcars, you must use filter drop socks at the end of the loading arms.

(e) For the pelleting operations at facilities with a daily production rate exceeding 50 tons per day, you must capture emissions and route them to a cyclone designed to reduce emissions of particulate matter less than 10 microns in diameter by at least 95 percent. You must operate and maintain the cyclone in accordance with manufacturer's specifications. This includes operating within the pressure drop range recommended by the manufacturer. You must comply with the monitoring requirements in § 63.11622(b) of this subpart.

§ 63.11622 What are the monitoring requirements for new and existing sources?

(a) If you own or operate an affected source required by § 63.11621(d) to use a filter drop sock reduce emissions from a bulk loading process, you must perform monthly inspections of each filter drop sock to ensure it is in proper working condition. You must record the results of these inspections in accordance with § 63.11624(c)(4) of this subpart.

(b) If you own or operate an affected source required by § 63.11621(e) to install and operate a cyclone to control emissions from pelleting operations, you must comply with the monitoring requirements in paragraphs (b)(1) and (2) of this section.

(1) You must perform monthly inspections of the cyclone for corrosion, erosion, or any other damage that could result in air in-leakage, and record the results in accordance with § 63.11624(c)(5)(ii).

(2) You must monitor pressure drop at least once per day. You must also record the pressure drop in accordance with § 63.11624(c)(5)(iii).

§ 63.11623 [Reserved]

§ 63.11624 What are the notification, reporting, and recordkeeping requirements?

(a) *Notifications.* You must submit the notifications identified in paragraphs (a)(1) and (2) of this section.

(1) *Initial Notification.* You must submit the Initial Notification required by § 63.9(b)(2) of the General Provisions no later than 120 days after the date of publication of the final rule in the **Federal Register**. The Initial Notification must include the information specified in paragraphs (a)(1)(i) through (iv) of this section.

(i) The name, address, phone number and e-mail address of the owner and operator;

(ii) The address (physical location) of the affected source;

(iii) An identification of the relevant standard (i.e., this subpart); and

(iv) A brief description of the operation

(2) *Notification of Compliance Status.* If you are the owner of an existing affected source, you must submit a Notification of Compliance Status in accordance with § 63.9(h) of the General Provisions on or before 2 years and 120 days after the date of publication of the final rule in the **Federal Register**. If you are the owner or operator of a new affected source, you must submit a Notification of Compliance Status within 120 days of initial startup, or by 120 days after the date of publication of the final rule in the **Federal Register**, whichever is later. This Notification of Compliance Status must include the information specified in paragraphs (a)(2)(i) through (iii) of this section.

(i) Your company's name and address;

(ii) A statement by a responsible official with that official's name, title, phone number, e-mail address and signature, certifying the truth, accuracy, and completeness of the notification and a statement of whether the source has complied with all the relevant standards and other requirements of this subpart;

(iii) The pressure drop range that constitutes proper operation of the cyclone if you own or operate an affected source required by § 63.11621(e) to install and operate a cyclone to control emissions from pelleting operations.

(b) *Annual compliance certification report.* You must, by March 1 of each year, prepare an annual compliance certification report for the previous calendar year containing the information specified in paragraphs (b)(1) through (b)(4) of this section. You must submit the report by March 15 if you had any instance described by paragraph (b)(3) or (b)(4) of this section.

(1) Your company's name and address.

(2) A statement by a responsible official with that official's name, title, phone number, e-mail address and signature, certifying the truth, accuracy, and completeness of the notification and a statement of whether the source has complied with all the relevant standards and other requirements of this subpart.

(3) If the source is not in compliance, include a description of deviations from the applicable requirements, the time periods during which the deviations occurred, and the corrective actions taken.

(4) Identification of all instances when the daily pressure drop across a cyclone is outside of the pressure drop range that constitutes proper operation of the cyclone submitted as part of your Notification of Compliance Status. In these instances, include the time periods when this occurred and the corrective actions taken.

(c) *Records.* You must maintain the records specified in paragraphs (c)(1) through (5) of this section in accordance with paragraphs (c)(6) through (8) of this section.

(1) As required in § 63.10(b)(2)(xiv), you must keep a copy of each notification that you submitted to comply with this subpart in accordance with paragraph (a) of this section, and all documentation supporting any Initial Notification or Notification of Compliance Status that you submitted.

(2) You must keep a copy of each Annual Compliance Certification prepared in accordance with paragraph (b) of this section.

(3) You must keep a monthly record certifying that you have complied with

the management practices in § 63.11621(a), (b), (c), and (d).

(4) For each filter drop sock used to comply with the requirements in § 63.11621(d), you must keep the records of all monthly inspections including the information identified in paragraphs (c)(4)(i) through (iii) of this section.

(i) The date, place, and time of each inspection;

(ii) Person performing the inspection;

(iii) Results of the inspection, including the date, time, and duration of the corrective action period from the time the inspection indicated a problem to the time of the indication that the filter drop sock was replaced or restored to proper operation.

(5) For each cyclone used to comply with the requirements in § 63.11621(e), you must keep the records in paragraphs (c)(5)(i) through (iii) of this section.

(i) Manufacturer's specifications.

(ii) Records of all quarterly inspections including the information identified in paragraphs (c)(5)(ii)(A) through (C) of this section.

(A) The date, place, and time of each inspection;

(B) Person performing the inspection;

(C) Results of the inspection, including the date, time, and duration of the corrective action period from the time the inspection indicated a problem to the time of the indication that the cyclone was restored to proper operation.

(iii) Records of the daily pressure drop measurements, along with the date, time, and duration of the correction action period from the time the monitoring indicated a problem to the time of the indication that the cyclone was restored to proper operation.

(6) Your records must be in a form suitable and readily available for expeditious review, according to § 63.10(b)(1).

(7) As specified in § 63.10(b)(1), you must keep each record for 5 years following the date of each recorded action.

(8) You must keep each record onsite for at least 2 years after the date of each recorded action according to § 63.10(b)(1). You may keep the records offsite for the remaining 3 years.

Other Requirements and Information

§ 63.11625 What parts of the General Provisions apply to my facility?

Table 1 of this subpart shows which parts of the General Provisions in §§ 63.1 through 63.16 apply to you.

§ 63.11626 Who implements and enforces this subpart?

(a) This subpart can be implemented and enforced by EPA or a delegated authority such as your state, local, or tribal agency. If the EPA Administrator has delegated authority to your state, local, or tribal agency, then that agency has the authority to implement and enforce this subpart. You should contact your EPA Regional Office to find out if implementation and enforcement of this subpart is delegated to your state, local, or tribal agency.

(b) In delegating implementation and enforcement authority of this subpart to a state, local, or tribal agency under 40 CFR part 63, subpart E, the authorities contained in paragraph (c) of this section are retained by the EPA Administrator and are not transferred to the state, local, or tribal agency.

(c) The authorities that cannot be delegated to state, local, or tribal agencies are specified in paragraphs (c)(1) through (5) of this section.

(1) Approval of an alternative nonopacity emissions standard under § 63.6(g).

(2) Approval of an alternative opacity emissions standard under § 63.6(h)(9).

(3) Approval of a major change to test methods under § 63.7(e)(2)(ii) and (f). A ''major change to test method'' is defined in § 63.90.

(4) Approval of a major change to monitoring under § 63.8(f). A ''major change to monitoring'' is defined in § 63.90.

(5) Approval of a major change to recordkeeping and reporting under § 63.10(f). A ''major change to recordkeeping/reporting'' is defined in § 63.90.

§ 63.11627 What definitions apply to this subpart?

Terms used in this subpart are defined in the CAA, in § 63.2, and in this section.

Cyclone means a mechanically aided collector that uses inertia to separate particulate matter from the gas stream as it spirals through the cyclone.

Daily production level means the average amount of prepared feed product produced each day over a typical annual period.

Filter drop sock means a device at the loadout end of a bulk loader that lessens fugitive emissions by containing the unloaded product within the device thus preventing windblown and drop caused fugitive emissions. Flexible spouts are considered filter drop socks.

Pelleting operations means all operations that make pelleted food from meal, including but not limited to, the steam conditioning, die-casting, drying, cooling, and crumbling, and granulation.

Prepared feed manufacturing facility means a facility that produces feeds for large and small animals, not including dogs and cats.

§ 63.11628—63.11638 [Reserved]

Tables to Subpart DDDDDDD of Part 63

Table 1 to Subpart DDDDDDD of Part 63—Applicability of General Provisions to Prepared Feeds Manufacturing Area Sources

As required in § 63.11619, you must meet each requirement in the following table that applies to you.

Draft Part 63 General Provisions to be incorporated for Prepared Feeds:

Citation	Subject	Applies to Subpart DDDDDDD?
63.1	Applicability	Yes.
63.2	Definitions	Yes.
63.3	Units and Abbreviations	Yes.
63.4	Prohibited Activities and Circumvention	Yes.
63.5	Preconstruction Review and Notification Requirements.	No.
63.6(a),(b)(1)–(b)(5), (b)(7), (c), (f)(2)–(3), (g), (i), and (j).	Compliance with Standards and Maintenance Requirements.	Yes.
63.6(e)(1), (e)(3), (f)(1), and (h)	Startup, shutdown, and malfunction requirements and opacity/visible emission standards.	No. Standards apply at all times, including during startup, shutdown, and malfunction events.
63.7	Performance Testing Requirements	No.
63.8	Monitoring Requirements	Yes.
63.9(a), (b), (c), (d), (h), (i), and (j)	Notification Requirements.	Yes.
63.9(e), (f), (g)		No

Citation	Subject	Applies to Subpart DDDDDDD?
63.10(a),(b)(1), (b)(2)(i)–(iii), (b)(2)(vi)–(xiv), (c), (d)(1), (e), and (f).	Recordkeeping and Reporting Requirements	Yes.
63.10(b)(2)(iv)–(v), (b)(3), and (d)(2)–(5)		No.
63.11	Control Device Requirements	No.
63.12	State Authorities and Delegations	Yes.
63.13	Addresses	Yes.
63.14	Incorporations by Reference	Yes.
63.15	Availability of Information and Confidentiality	Yes.
63.16	Performance Track Provisions	Yes.
63.1(a)(5), (a)(7)–(9), (b)(2), (c)(3)–(4), (d), 63.6(b)(6), (c)(3), (c)(4), (d), (e)(2), (e)(3)(ii), (h)(3), (h)(5)(iv), 63.8(a)(3), 63.9(b)(3), (h)(4), 63.10(c)(2)–(4), (c)(9).	Reserved	No.

[FR Doc. E9–17826 Filed 7–24–09; 8:45 am]
BILLING CODE 6560–50–P

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 300

[EPA–HQ–SFUND–2009–0501; FRL–8934–1]

National Oil and Hazardous Substance Pollution Contingency Plan National Priorities List

AGENCY: Environmental Protection Agency.

ACTION: Notice of Intent to Delete the Southern California Edison, Visalia Pole Yard Superfund Site from the National Priorities List.

SUMMARY: The Environmental Protection Agency (EPA) Region IX is issuing a Notice of Intent to Delete the Southern California Edison (SCE), Visalia Pole Yard Superfund Site (Site) located in northeastern Visalia, Tulare County, California, from the National Priorities List (NPL), and requests public comments on this action. The NPL, promulgated pursuant to section 105 of the Comprehensive Environmental Response, Compensation, and Liability Act (CERCLA) of 1980, as amended, is an appendix of the National Oil and Hazardous Substances Pollution Contingency Plan (NCP). The EPA and the State of California, through the Department of Toxic Substances Control (DTSC), have determined that all appropriate response actions under CERCLA, other than operation, maintenance, and five-year reviews, have been completed. However, this deletion does not preclude future actions under Superfund.

DATES: Comments concerning deletion of this Site must be received by August 26, 2009.

ADDRESSES: Submit your comments, identified by Docket ID No. EPA–HQ–SFUND–2009–0501 by one of the following methods:

- *http://www.regulations.gov*. Follow online instructions for submitting comments.
- *E-mail: lane.jackie@epa.gov*.
- *Fax:* (415) 947–3528.
- *Mail:* Jackie Lane, Community Involvement Coordinator, U.S. EPA Region IX (SFD 6–3), 75 Hawthorne Street, San Francisco, California 94105.
- *Phone:* (415) 972–3236.
- *Hand delivery:* U.S. EPA Region IX (SFD 6–3), 75 Hawthorne Street, San Francisco, California 94105. Deliveries are only accepted during regular office days and hours of operation (Monday through Friday, 8 a.m. to 5 p.m.). Special arrangements will need to be made with EPA staff for deliveries of boxed information.

Instructions: Direct your comments to Docket ID No. EPA–HQ–SFUND–2009–0501. EPA's policy is that all comments received will be included in the public docket without change and may be made available online at *http://www.regulations.gov*, including any personal information provided, unless the comment includes information claimed to be Confidential Business Information (CBI) or other information whose disclosure is restricted by statute. Do not submit information that you consider to be CBI or otherwise protected through *http://www.regulations.gov* or e-mail. The *http://www.regulations.gov* Web site is an ''anonymous access'' system, which means that EPA will not know your identity or contact information unless it is provided it in the body of your comment. If you send an e-mail comment directly to EPA without going through *http://www.regulations.gov*, your e-mail address will be automatically captured and included as part of the publicly available docket on the Internet. EPA recommends that all submittals include your name and other contact information (*i.e.* e-mail and/or physical address and phone number). Please note that electronic file submittals should be free of any physical defects and computer viruses and avoid the use of special characters and any form of encryption. If technical difficulties prevent EPA from reading your comment and cannot contact you for clarification, EPA may not be able to consider your comment.

Docket

All documents in the docket are listed in the *http://www.regulations.gov* index; however, although listed in the index, some information is not publicly available (*e.g.* CBI or other information whose disclosure is restricted by disclosure statute. Certain other materials, such as copyrighted materials, will be publicly available only in the hard copy. All other publicly available docket materials are available either electronically in *http://www.regulations.gov* or in hard copy at the Site Information repositories below:

U.S. EPA Superfund Records Center, 95 Hawthorne Street, San Francisco, California 94105–3901, (415) 536–2000.

Tulare County Public Library, 200 West Oak Street, Visalia, CA 93291, (818) 952–0603.

FOR FURTHER INFORMATION CONTACT: Charnjit Bhullar, Remedial Project Manager, U.S. EPA Region IX (SFD 7–3), 75 Hawthorne Street, San Francisco, California 94105, (415) 972–3960.

SUPPLEMENTARY INFORMATION: In the ''Rules and Regulations'' section of today's **Federal Register**, we are publishing a direct final Notice of Deletion of the Southern California Edison (SCE), Visalia Pole Yard Superfund Site without prior Notice of Intent to Delete because we view this as a noncontroversial revision and anticipate no adverse comment. We have explained our reasons for this deletion in the preamble to the direct final Notice of Deletion, and those reasons are incorporated herein. If we

receive no adverse comment(s) on this deletion action, we will not take further action on this Notice of Intent to Delete. If we receive adverse comment(s), we will withdraw the direct final Notice of Deletion, and it will not take effect. We will, as appropriate, address all public comments in a subsequent final Notice of Deletion based on this Notice of Intent to Delete. We will not institute a second comment period on this Notice of Intent to Delete. Any parties interested in commenting must do so at this time.

For additional information, see the direct final Notice of Deletion which is located in the *Rules* section of this **Federal Register.**

List of Subjects in 40 CFR Part 300

Environmental protection, Air pollution control, Chemicals, Hazardous substances, Hazardous waste, Intergovernmental relations, Penalties, Reporting and recordkeeping requirements, Superfund, Water pollution control, Water supply.

Authority: 33 U.S.C. 1321(c)(2); 42 U.S.C. 9601–9657; E.O. 12777, 56 FR 54757, 3 CFR, 1991 Comp., p. 351; E.O. 12580, 52 FR 2923; 3 CFR, 1987 Comp., p. 193.

Dated: July 15, 2009.

Laura Yoshii,

Acting Regional Administrator, Region IX.

[FR Doc. E9–17564 Filed 7–24–09; 8:45 am]

BILLING CODE 6560–50–P

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

50 CFR Part 226

[Docket No. 0907081108–91119–01]

RIN 0648–XP68

Listing Endangered and Threatened Wildlife and Designating Critical Habitat; 90–day Finding for a Petition to Revise Designated Critical Habitat for Elkhorn and Staghorn Corals

AGENCY: National Marine Fisheries Service (NMFS), NationalOceanic and Atmospheric Administration (NOAA), Commerce.

ACTION: Notice of petition finding; request for information and comments.

SUMMARY: We, the National Marine Fisheries Service (NMFS), announce a 90–day finding for a petition to revise elkhorn (*Acropora palmata*) and staghorn (*A. cervicornis*) corals' critical habitat under the Endangered Species Act (ESA) of 1973, as amended. Elkhorn and staghorn corals are listed as threatened throughout their ranges and have designated critical habitat consisting of substrate of suitable quality and availability to support larval settlement and recruitment and the reattachment and recruitment of asexual fragments in water depths shallower than 30 meters in four areas in Florida, Puerto Rico, and the U.S. Virgin Islands. The petition seeks to extend the northern boundary of designated critical habitat in the Florida area to the Lake Worth Inlet, approximately 15.5 miles (24.9 km) north of the current boundary at Boynton Beach Inlet. We find that the petition presents substantial scientific information that the revision may be warranted. We are soliciting information and comments pertaining to this request for revision of critical habitat.

DATES: Written comments and information related to this petition finding or the petitioned action must be received [see **ADDRESSES**] by August 26, 2009.

ADDRESSES: You may submit comments, identified by [RIN 0648–XP68], by any one of the following methods: (1) Electronic Submissions: Submit all electronic public comments via the Federal eRulemaking Portal at *http://www.regulations.gov*; (2) Fax: 727–824–5309, attention: Jennifer Moore; or (3) mail: addressed to Jennifer Moore, National Marine Fisheries Service, Southeast Regional Office, Protected Resources Division, 263 13th Avenue South, Saint Petersburg, FL, 33701.

All comments received are a part of the public record and will generally be posted to *http://www.regulations.gov* without change. All personal identifying information (for example, name, address, etc.) voluntarily submitted by the commenter may be publicly accessible. Do not submit confidential business information or otherwise sensitive or protected information.

NMFS will accept anonymous comments (enter N/A in the required fields if you wish to remain anonymous). Attachments to electronic comments will be accepted in Microsoft Word, Excel, WordPerfect, or Adobe PDF file formats only.

Interested persons may obtain more information about critical habitat designated for elkhorn and staghorn corals online at the NMFS Southeast Regional Office website: *http://sero.nmfs.noaa.gov/pr/esa/acropora.htm*.

FOR FURTHER INFORMATION CONTACT: Jennifer Moore by phone 727–824–5312, fax 727–824–5309, or e-mail *jennifer.moore@noaa.gov*; or Marta Nammack by phone 301–713–1401 or e-mail *marta.nammack@noaa.gov*.

SUPPLEMENTARY INFORMATION:

Background

Critical habitat is defined in the ESA (16 U.S.C. 1531 *et seq.*) as:

''(i) the specific areas within the geographical area currently occupied by the species, at the time it is listed...on which are found those physical or biological features (I) essential to the conservation of the species and (II) which may require special management considerations or protection; and (ii) specific areas outside the geographical area occupied by the species at the time it is listed upon a determination by the Secretary that such areas are essential for the conservation of the species.''

Section 4(b)(2) of the ESA requires us to designate and make revisions to critical habitat for listed species based on the best scientific data available and after taking into consideration the economic impact, the impact on national security, and any other relevant impact, of specifying any particular area as critical habitat. The Secretary of Commerce may exclude any particular area from critical habitat if he determines that the benefits of such exclusion outweigh the benefits of specifying such area as part of the critical habitat, unless he determines that the failure to designate such area as critical habitat will result in the extinction of the species concerned. Section 4(b)(3)(D)(i) of the ESA requires us to make a 90–day finding as to whether a petition to revise critical habitat presents substantial scientific information indicating that the revision may be warranted. Our implementing regulations (50 CFR 424.14) define ''substantial information'' as the amount of information that would lead a reasonable person to believe that the measure proposed in the petition may be warranted. Our regulations provide further that, in making a 90–day finding on a petition to revise critical habitat, we shall consider whether a petition includes substantial information indicating that: (i) areas contain physical and biological features essential to, and that may require special management to provide for, the conservation of the species; or (ii) areas designated as critical habitat do not contain resources essential to, or do not require special management to provide for, the conservation of the species. In determining whether substantial information exists, we take into account several factors, including information submitted with, and referenced in, the petition and all other information readily available in our files. To the maximum extent practicable, this finding is to be made within 90 days of the receipt of the petition, and the finding is to be published promptly in

the **Federal Register**. If we find that a petition presents substantial information indicating that the revision may be warranted, within 12 months after receiving the petition, we are required to determine how we intend to proceed with the requested revision and promptly publish notice of such intention in the **Federal Register**. See ESA Section 4(b)(3)(D)(ii).

Analysis of Petition

On January 6, 2009, we received a petition from Palm Beach County Reef Rescue (the Petitioner) to revise elkhorn and staghorn corals' critical habitat (PBCRR, 2009). Currently designated critical habitat consists of substrate of suitable quality and availability to support larval settlement and recruitment and the reattachment and recruitment of asexual fragments in water depths shallower than 30 meters in four areas in Florida, Puerto Rico, and the U.S. Virgin Islands (73 FR 72210; November 26, 2008). The Petitioner requests that we extend the northern boundary of the Florida area to the Lake Worth Inlet, approximately 15.5 miles (24.9 km) north of the current boundary at Boynton Beach Inlet.

The petition contains information on the location of staghorn coral colonies north of Boynton Beach Inlet. This location was verified by the petitioner on December 20, 2008. The petition includes information about the geology of the Florida Reef Tract, suggesting that the features essential to elkhorn and staghorn corals exist north of Boynton Beach Inlet. The petition contains information on the genetic diversity of staghorn coral. Finally, the Petitioner suggests that the waters of Palm Beach County represent a potential thermal refuge for staghorn coral.

Petition Finding

Based on the above information and information readily available in our files, and pursuant to criteria specified in 50 CFR 424.14(c), we find the petition presents substantial scientific information indicating that the requested revision to designated critical habitat for elkhorn and staghorn corals may be warranted. We will review the information provided by the Petitioner, comments received from the public (requested below), and the best scientific information available before making a finding of how we intend to proceed with the requested revision by January 6, 2010.

We solicit information and comments on whether the petitioned area qualifies as critical habitat. Further, we solicit information on the potential economic, national security, and other relevant impacts that may arise from the requested revision of critical habitat.

We request that all data, information, and comments be accompanied by supporting documentation such as maps, bibliographic references, or reprints of pertinent publications. Comments and materials received will be available for public inspection, by appointment, during normal business hours at the above address (see **ADDRESSES**).

Peer Review

The Office of Management and Budget issued its Final Information Quality Bulletin for Peer Review on December 16, 2004. The Bulletin went into effect June 16, 2005, and generally requires that all ''influential scientific information'' and ''highly influential scientific information'' disseminated on or after that date be peer reviewed. Because the information used to evaluate this petition may be considered ''influential scientific information,'' we solicit the names of recognized experts in the field that could serve as peer reviewers of such information we may disseminate as we evaluate this petition. Independent peer reviewers will be selected from the academic and scientific community, applicable tribal and other Native American groups, Federal and state agencies, the private sector, and public interest groups.

Authority: 16 U.S.C. 1531 *et seq.*

Dated: July 21, 2009.

James W. Balsiger,

Acting Assistant Administrator for Fisheries, National Marine Fisheries Service.

[FR Doc. E9–17838 Filed 7–24–09; 8:45 am]

BILLING CODE 3510–22–S

Notices

Federal Register
Vol. 74, No. 142
Monday, July 27, 2009

This section of the FEDERAL REGISTER contains documents other than rules or proposed rules that are applicable to the public. Notices of hearings and investigations, committee meetings, agency decisions and rulings, delegations of authority, filing of petitions and applications and agency statements of organization and functions are examples of documents appearing in this section.

DEPARTMENT OF AGRICULTURE

Submission for OMB Review; Comment Request

July 22, 2009.

The Department of Agriculture has submitted the following information collection requirement(s) to OMB for review and clearance under the Paperwork Reduction Act of 1995, Public Law 104–13. Comments regarding (a) Whether the collection of information is necessary for the proper performance of the functions of the agency, including whether the information will have practical utility; (b) the accuracy of the agency's estimate of burden including the validity of the methodology and assumptions used; (c) ways to enhance the quality, utility and clarity of the information to be collected; (d) ways to minimize the burden of the collection of information on those who are to respond, including through the use of appropriate automated, electronic, mechanical, or other technological collection techniques or other forms of information technology should be addressed to: Desk Officer for Agriculture, Office of Information and Regulatory Affairs, Office of Management and Budget (OMB), *OIRA_Submission@OMB.EOP.GOV* or fax (202) 395–5806 and to Departmental Clearance Office, USDA, OCIO, Mail Stop 7602, Washington, DC 20250–7602. Comments regarding these information collections are best assured of having their full effect if received within 30 days of this notification. Copies of the submission(s) may be obtained by calling (202) 720–8681.

An agency may not conduct or sponsor a collection of information unless the collection of information displays a currently valid OMB control number and the agency informs potential persons who are to respond to the collection of information that such persons are not required to respond to the collection of information unless it displays a currently valid OMB control number.

Forest Service

Title: Day Use on the National Forests of Southern California.

OMB Control Number: 0596–0129.

Summary of Collection: Users of urban proximate National Forests in Southern California come from a variety of ethnic/racial, income, age, educational, and other socio-demographic categories. The activities pursued, sources utilized, and site attributes preferred are just some of the items affected by these differences. Additional information is needed for the managers of the National Forests in Southern California, in part to validate previous results and in part because of the continuously changing profile of the visitor population recreating on the National Forests of Southern California. In the absence of the resultant information from the proposed series, the Forest Service (FS) will be ill-equipped to implement management changes required to respond to needs and preferences of day use visitors. FS will collect information using a questionnaire and face-to-face interviews. The statute authorizing the collection of information is the Forest and Rangeland Renewable Resources Research Act of 1978 (Pub. L. 95–307, 92 Stat. 353).

Need and Use of the Information: FS will collect information on-site from recreation visitors to the urban National Forest day use areas on socio-demographic profile; National Forest visitation history and patterns; activity patterns; and why they recreate at particular sites, etc. The information will be used to assist resource managers in their effective management of recreation activities in the region studied. The Wildland Recreation and Urban Cultures Project will use the information to further expand its information base on visitor characteristics, safety, fire management, and mitigation of depreciative behaviors, such as vandalism. If the information is not collected, resource managers will have to make visitor based decisions on limited information.

Description of Respondents: Individuals or households.

Number of Respondents: 600.

Frequency of Responses: Reporting: On occasion.

Total Burden Hours: 80.

Forest Service

Title: Urgent Removal of Timber.

OMB Control Number: 0596–0167.

Summary of Collection: Periodically, catastrophic events such as severe drought conditions, insect and disease outbreaks, wildfires, floods, and windthrow occur on forested lands within, or near, National Forest System (NFS) lands. As a result of such catastrophic event, substantial amounts of private and other public timber may be severely damaged. The damaged timber must be harvested within a relatively short time period to avoid substantial losses in both the quantity and quality of the timber due to deterioration. The critical time period available for harvesting this damaged timber and avoiding substantial deterioration varies with the season of the year, the species of timber, the damaging agent, and the location of the damaged timber. The following statute is applicable to extension of National Forest System timber sales: The National Forest Management Act of 1976 (16 U.S.C. 472a), and 36 CFR 223.115 and 36 CFR 223.53.

Need and Use of the Information: The Forest Service (FS) will collect the following information: (1) Name of the timber sale purchaser; (2) Identity of catastrophic event creating the need for urgent removal of timber; (3) Name of the NFS sale contract(s) for which an urgent removal extension is requested; (4) Quantity of urgent removal from qualifying catastrophic event purchaser has under contract and/or plans to harvest subject to approval by FS of urgent removal extension of sale(s) identified in purchaser's request; and (5) General information showing the manufacturing and/or logging equipment capacity available to purchaser.

Description of Respondents: Business or other for-profit; individuals or households; Federal Government; State, Local or Tribal Government.

Number of Respondents: 23.

Frequency of Responses: Reporting: On occasion.

Total Burden Hours: 58.

Forest Service

Title: The Role of Local Communities in the Development of Agreement or Contract Plans through Stewardship Contracting.

OMB Control Number: 0596–0201.

Summary of Collection: Section 323 of Public Law 108–7 (16 U.S.C. 2104 Note) requires the Forest Service (FS) and Bureau of Land Management (BLM) to report to Congress annually on the role of local communities in the development of agreement or contract plans through stewardship contracting. To meet that requirement FS plans to conduct an annual telephone survey to gather the necessary information for use by both the FS and BLM in developing their separate annual reports to Congress.

Need and Use of the Information: The survey will collect information on the role of local communities in the development of agreement or contract plans through stewardship contracting. The survey will provide information regarding the nature of the local community involved in developing agreement or contract plans, the nature of roles played by the entities involved in developing agreement or contract plans, the benefits to the community and agency by being involved in planning and development of contract plans, and the usefulness of stewardship contracting in helping meet the needs of local communities.

Description of Respondents: Individuals or households; business or other for-profit; not-for-profit institutions; Federal Government; State, Local or Tribal Government.

Number of Respondents: 401.

Frequency of Responses: Reporting: Annually.

Total Burden Hours: 301.

Charlene Parker,

Departmental Information Collection Clearance Officer.

[FR Doc. E9–17834 Filed 7–24–09; 8:45 am]

BILLING CODE 3410–11–P

DEPARTMENT OF AGRICULTURE

Animal and Plant Health Inspection Service

[Docket No. APHIS–2009–0027]

National Animal Identification System; Close of Comment Period

AGENCY: Animal and Plant Health Inspection Service, USDA.

ACTION: Notice.

SUMMARY: This is a notice to inform the public that the comment period for the submission of stakeholder concerns related to the implementation of the National Animal Identification System will be closing on August 3, 2009. The comment period opened on May 1, 2009, with the publication of our first notice announcing public meetings on the subject. The last meeting was held on June 30, 2009, and it was our intention to continue to provide the public with the option of submitting written comments for at least 30 days following that final meeting.

DATES: We will consider all comments that we receive on or before August 3, 2009.

ADDRESSES: You may submit comments by either of the following methods:

- *Federal eRulemaking Portal:* Go to *http://www.regulations.gov/fdmspublic/component/main?main=DocketDetail&d=APHIS-2009-0027* to submit or view comments and to view supporting and related materials available electronically.
- *Postal Mail/Commercial Delivery:* Please send two copies of your comment to Docket No. APHIS–2009–0027, Regulatory Analysis and Development, PPD, APHIS, Station 3A–03.8, 4700 River Road Unit 118, Riverdale, MD 20737–1238. Please state that your comment refers to Docket No. APHIS–2009–0027.

Reading Room: You may read any comments that we receive on this docket in our reading room. The reading room is located in room 1141 of the USDA South Building, 14th Street and Independence Avenue SW., Washington, DC. Normal reading room hours are 8 a.m. to 4:30 p.m., Monday through Friday, except holidays. To be sure someone is there to help you, please call (202) 690–2817 before coming.

Other Information: Additional information about APHIS and its programs is available on the Internet at *http://www.aphis.usda.gov*.

FOR FURTHER INFORMATION CONTACT: Dr. Adam Grow, Director, Surveillance and Identification Programs, National Center for Animal Health Programs, VS, APHIS, 4700 River Road Unit 200, Riverdale, MD 20737; (301) 734–3752.

SUPPLEMENTARY INFORMATION: As part of its ongoing efforts to safeguard animal health, the U.S. Department of Agriculture (USDA) initiated implementation of a National Animal Identification System (NAIS) in 2004. The NAIS is a cooperative State-Federal-industry program administered by USDA's Animal and Plant Health Inspection Service (APHIS). The purpose of the NAIS is to provide a streamlined information system that will help producers and animal health officials respond quickly and effectively to animal disease events in the United States.

The ultimate long-term goal of the NAIS is to provide State and Federal officials with the capability to identify all animals and premises that have had direct contact with a disease of concern within 48 hours after discovery. Meeting that goal requires a comprehensive animal-disease traceability infrastructure. An NAIS User Guide and a Business Plan, both available on our Web site at *http://animalid.aphis.usda.gov/nais/animal_id/index.shtml*, provide detailed information about our plans for implementing the system.

Despite concerted efforts, APHIS has not been able to fully implement the NAIS. Many of the same issues that producers originally had with the system, such as the cost and impact on small farmers, privacy and confidentiality, and liability, continue to cause concern.

In order to provide individuals and organizations an opportunity to discuss their concerns regarding the NAIS and offer potential solutions, we have held 14 public meetings throughout the country and have been soliciting comments via our Web site.

Our goal is to gather feedback and input from a wide range of stakeholders to assist us in making an informed decision regarding both the future of the NAIS and the objectives and direction for animal identification and traceability. We would particularly welcome feedback on the following topics:

- *Cost*. What are your concerns about the cost of the NAIS? What steps would you suggest APHIS use to address cost?
- *Impact on small farmers*. What are your concerns about the effect of the NAIS on small farmers? What approaches would you suggest APHIS take to address the potential impact on small farmers?
- *Privacy and confidentiality*. What are your concerns regarding how the NAIS will affect your operation's privacy and/or the confidentiality of your operation? What steps or tactics would you suggest APHIS use to address privacy and confidentiality issues?
- *Liability*. What are your concerns about your operation's liability under the NAIS? What would you suggest APHIS consider to address liability concerns?
- *Premises registration*. Do you have any suggestions on how to make premises registration, or the identification of farm or ranch locations, easier for stakeholders? How should we address your concerns regarding premises registration?

• *Animal identification.* Do you have any suggestions on how to make animal identification practical and useful to stakeholders while simultaneously meeting the needs of animal health officials who must conduct disease tracebacks?

• *Animal tracing.* Do you have any suggestions on how to make the animal tracing component practical, in particular the reporting of animal movements to other premises, while meeting the needs of animal health officials who must conduct disease tracebacks?

During the time that the public meetings were being held, we provided members of the public who were not able to attend a meeting with the option of submitting comments via the Regulations.gov Web site. The last meeting was held on June 30, 2009, and it was our intention to continue to provide the public with the option of submitting written comments for at least 30 days following that final meeting. As noted in the heading **DATES** at the beginning of this notice, we will consider all comments that we receive on or before August 3, 2009.

Done in Washington, DC, this 21st day of July 2009.

Kevin Shea,

Acting Administrator, Animal and Plant Health Inspection Service.

[FR Doc. E9–17797 Filed 7–24–09; 8:45 am]

BILLING CODE 3410–34–P

DEPARTMENT OF AGRICULTURE

Animal and Plant Health Inspection Service

[Docket No. APHIS–2009–0037]

Determination of Pest-Free Areas in the Republic of South Africa; Request for Comments

AGENCY: Animal and Plant Health Inspection Service, USDA.

ACTION: Notice.

SUMMARY: We are advising the public that we have received a request from the Government of the Republic of South Africa to recognize 16 additional magisterial districts in 3 provinces as pest-free areas for citrus black spot. After reviewing the documentation submitted in support of this request, the Administrator of the Animal and Plant Health Inspection Service has determined that these areas meet the criteria in our regulations for recognition as pest-free areas. We are making that determination, as well as an evaluation document we have prepared in connection with this action, available for review and comment.

DATES: We will consider all comments we receive on or before September 25, 2009.

ADDRESSES: You may submit comments by either of the following methods:

• *Federal eRulemaking Portal:* Go to *http://www.regulations.gov/fdmspublic/component/main?main=DocketDetail&d=APHIS-2009-0037* to submit or view comments and to view supporting and related materials available electronically.

• *Postal Mail/Commercial Delivery:* Please send two copies of your comment to Docket No. APHIS–2009–0037, Regulatory Analysis and Development, PPD, APHIS, Station 3C71, 4700 River Road Unit 118, Riverdale, MD 20737–1238. Please state that your comment refers to Docket No. APHIS–2009–0037.

Reading Room: You may read any comments that we receive on this docket in our reading room. The reading room is located in room 1141 of the USDA South Building, 14th Street and Independence Avenue, SW., Washington, DC. Normal reading room hours are 8 a.m. to 4:30 p.m., Monday through Friday, except holidays. To be sure someone is there to help you, please call (202) 690–2817 before coming.

Other Information: Additional information about APHIS and its programs is available on the Internet at *http://www.aphis.usda.gov.*

FOR FURTHER INFORMATION CONTACT: Mr. Phillip B. Grove, Regulatory Coordination Specialist, Regulatory Coordination and Compliance, APHIS, 4700 River Road Unit 156, Riverdale, MD 20737; (301) 734–6280.

SUPPLEMENTARY INFORMATION: Under the regulations in ''Subpart-Fruits and Vegetables'' (7 CFR 319.56 through 319.56–49, referred to below as the regulations), the Animal and Plant Health Inspection Service (APHIS) of the U.S. Department of Agriculture prohibits or restricts the importation of fruits and vegetables into the United States from certain parts of the world to prevent plant pests from being introduced into and spread within the United States.

Section 319.56–4 of the regulations contains a performance-based process for approving the importation of commodities that, based on the findings of a pest risk analysis, can be safely imported subject to one or more of the designated phytosanitary measures listed in paragraph (b) of that section. One of the designated phytosanitary measures is that the fruits or vegetables are imported from a pest-free area in the country of origin that meets the requirements of § 319.56–5 for freedom from that pest and are accompanied by a phytosanitary certificate stating that the fruits or vegetables originated in a pest-free area in the country of origin.

Under the regulations in § 319.56–5, APHIS requires that determinations of pest-free areas be made in accordance with the criteria for establishing freedom from pests found in International Standard for Phytosanitary Measures (ISPM) No. 4, ''Requirements for the establishment of pest-free areas.'' The international standard was established by the International Plant Protection Convention of the United Nations' Food and Agriculture Organization and is incorporated by reference in our regulations in 7 CFR 300.5. In addition, APHIS must also approve the survey protocol used to determine and maintain pest-free status, as well as protocols for actions to be performed upon detection of a pest. Pest-free areas are subject to audit by APHIS to verify their status.

APHIS has received a request from the Government of the Republic of South Africa to recognize additional areas of that country as being free of *Guignardia citricarpa,* citrus black spot.[1] Currently, we only allow importation of citrus fruit from the Republic of South Africa when it is grown in the Western Cape Province and the magisterial districts of Hartswater and Warrenton of the Northern Cape Province, which are areas that APHIS has determined to be free of citrus black spot.[2] Specifically, the Government of the Republic of South Africa asked that we recognize the magisterial districts of Boshof, Fauresmith, Jacobsdal, Koffiefontein, and Philippolis in the Free State Province; Christiania and Taung in the North West Province; and Barkly-wes/west, Gordonia, Hay, Herbert, Hopetown, Kenhardt, Kimberely, Namakwaland, and Prieska in the Northern Cape Province as areas that are free of citrus black spot.

In accordance with our regulations and the criteria set out in ISPM No. 4, we have reviewed and approved the survey protocols and other information provided by the Republic of South Africa relative to its system to establish freedom, phytosanitary measures to maintain freedom, and system for the verification of the maintenance of freedom. Because this action concerns the expansion of a currently recognized pest-free area in the Republic of South

[1] A list of pest-free-areas currently recognized by APHIS can be found at *http://www.aphis.usda.gov/import_export/plant/manuals/ports/downloads/DesignatedPestFreeAeas.pdf.*

Africa from which citrus fruit is authorized for importation into the United States, our review of the information presented by the Republic of South Africa in support of its request is examined in a commodity import evaluation document (CIED) titled ''Recognition of Additional Magisterial Districts as Citrus Black Spot Pest-Free Areas for the Republic of South Africa.''

The CIED may be viewed on the Regulations.gov Web site or in our reading room (see **ADDRESSES** above for instructions for accessing Regulations.gov and information on the location and hours of the reading room). You may request paper copies of the CIED by calling or writing to the person listed under **FOR FURTHER INFORMATION CONTACT**.

Therefore, in accordance with § 319.56–5(c), we are announcing the Administrator's determination that the magisterial districts of Boshof, Fauresmith, Jacobsdal, Koffiefontein, and Philippolis in the Free State Province; Christiania and Taung in the North West Province; and Barkly-wes/west, Gordonia, Hay, Herbert, Hopetown, Kenhardt, Kimberely, Namakwaland, and Prieska in the Northern Cape Province meet the criteria of § 319.56–5(a) and (b) with respect to freedom from citrus black spot. After reviewing the comments we receive on this notice, we will announce our decision regarding the status of these areas with respect to their freedom from citrus black spot. If the Administrator's determination remains unchanged, we will add these areas in the Republic of South Africa to the list of pest-free areas.

Done in Washington, DC, this 21st day of July 2009.

Kevin Shea,

Acting Administrator, Animal and Plant Health Inspection Service.

[FR Doc. E9–17794 Filed 7–24–09; 8:45 am]

BILLING CODE 3410–34–P

DEPARTMENT OF AGRICULTURE

Animal and Plant Health Inspection Service

[Docket No. APHIS–2009–0056]

Determination of Regulatory Review Period for Purposes of Patent Extension; NAHVAX® Marek's Disease Vaccine

AGENCY: Animal and Plant Health Inspection Service, USDA.

ACTION: Notice.

SUMMARY: We are advising the public that the Animal and Plant Health Inspection Service has determined the regulatory review period for NAHVAX® Marek's Disease Vaccine and is publishing this notice of that determination as required by law. We have made this determination in response to the submission of an application to the Commissioner of Patents and Trademarks, Department of Commerce, for the extension of a patent that claims that veterinary biologic.

DATES: We will consider all requests for revision of the regulatory review period determination that we receive on or before August 26, 2009. We will consider all due diligence petitions that we receive on or before January 25, 2010.

ADDRESSES: You may submit revision requests and due diligence petitions by either of the following methods:

- *Federal eRulemaking Portal:* Go to *http://www.regulations.gov/fdmspublic/component/main?main=DocketDetail&d=APHIS-2009-0056* to submit or view revision requests and due diligence petitions and to view supporting and related materials available electronically.
- *Postal Mail/Commercial Delivery:* Please send two copies of your request or petition to Docket No. APHIS–2009–0056, Regulatory Analysis and Development, PPD, APHIS, Station 3A–03.8, 4700 River Road, Unit 118, Riverdale, MD 20737–1238. Please state that your revision request or due diligence petition refers to Docket No. APHIS–2009–0056.

Reading Room: A copy of the regulatory review period determination and any revision requests or due diligence petitions that we receive on this determination are available for public inspection in our reading room. The reading room is located in room 1141 of the USDA South Building, 14th Street and Independence Avenue SW., Washington, DC. Normal reading room hours are 8 a.m. to 4:30 p.m., Monday through Friday, except holidays. To be sure someone is there to help you, please call (202) 690–2817 before coming.

Other Information: Additional information about APHIS and its programs is available on the Internet at *http://www.aphis.usda.gov.*

FOR FURTHER INFORMATION CONTACT: Dr. Albert P. Morgan, Section Leader, Operational Support Section, Center for Veterinary Biologics, Policy Evaluation and Licensing, VS, APHIS, 4700 River Road, Unit 148, Riverdale, MD 20737–1231; phone (301) 734–8245; fax (301) 734–4314.

For information concerning the regulatory review period determination contact Dr. Patricia L. Foley, Center for Veterinary Biologics, Policy Evaluation and Licensing, VS, APHIS, 510 South 17th Street, Suite 104, Ames, IA 50010; phone (515) 232–5785, fax (515) 232–7120.

SUPPLEMENTARY INFORMATION: The provisions of 35 U.S.C. 156, '' Extension of patent term,'' provide, generally, that a patent for a product may be extended for a period of up to 5 years as long as the patent claims a product that, among other things, was subject to a regulatory review period before its commercial marketing or use. (The term ''product'' is defined in that section as ''a drug product'' [which includes veterinary biological products] or ''any medical device, food additive, or color additive subject to regulation under the Federal Food, Drug, and Cosmetic Act.'') A product's regulatory review period forms the basis for determining the amount of extension an applicant may receive.

The regulations in 9 CFR part 124, ''Patent Term Restoration'' (referred to below as the regulations), set forth procedures and requirements for the Animal and Plant Health Inspection Service's (APHIS) review of applications for the extension of the term of certain patents for veterinary biological products pursuant to 35 U.S.C. 156. As identified in the regulations, the responsibilities of APHIS include:

- Assisting Patent and Trademark Office of the U.S. Department of Commerce in determining eligibility for patent term restoration;
- Determining the length of a product's regulatory review period;
- If petitioned, reviewing and ruling on due diligence challenges to APHIS' regulatory review period determinations; and
- Conducting hearings to review initial APHIS findings on due diligence challenges.

The regulations are designed to be used in conjunction with regulations issued by the Patent and Trademark Office concerning patent term extension, which may be found at 37 CFR 1.710 through 1.791.

A regulatory review period consists of two periods of time: A testing phase and an approval phase. For veterinary biologics, the testing phase begins on the date the authorization to prepare an experimental veterinary biologic became effective and runs until the approval phase begins. The approval phase begins on the date an application for a license was initially submitted for approval and ends on the date such license was issued. Although only a portion of a regulatory review period

may count toward the actual amount of extension that the Commissioner of Patents and Trademarks may award, APHIS' determination of the length of a regulatory review period for a veterinary biologic will include all of the testing phase and approval phase as specified in 35 U.S.C. 156(g)(5)(B).

APHIS recently licensed for production and marketing the veterinary biologic NAHVAX® Marek's Disease Vaccine. Subsequent to this approval, the Patent and Trademark Office received a patent term restoration application for NAHVAX® Marek's Disease Vaccine (U.S. Patent No. 5, 965, 138) from Schering Plough Animal Health Corporation, and the Patent and Trademark Office requested APHIS' assistance in determining this patent's eligibility for patent term restoration. In a letter dated February 2, 2009, APHIS advised the Patent and Trademark Office that this veterinary biologic had undergone a regulatory review period and that the approval of NAHVAX® Marek's Disease Vaccine (Marek's Disease Vaccine, Serotypes 1 & 3, Live Herpesvirus Chimera) represented the first permitted commercial licensing or use of the product. Subsequently, the Patent and Trademark Office requested that APHIS determine the product's regulatory review period.

APHIS has determined that the applicable regulatory review period for NAHVAX® Marek's Disease Vaccine is 1,539 days. Of this time, 0 days occurred during the testing phase of the regulatory review period, and 1,539 days occurred during the approval phase. These periods were derived from the following dates:

1. *The date the application for a license was initially submitted for approval under the Virus-Serum-Toxin Act:* July 14, 2004. APHIS has verified the applicant's claim that the application was initially submitted on July 14, 2004.

2. *The date the license was issued:* September 29, 2008. APHIS has verified the applicant's claim that the license for the commercial marketing of the vaccine was issued on September 29, 2008.

This determination of the regulatory review period establishes the maximum potential length of a patent extension. However, the U.S. Patent and Trademark Office applies several statutory limitations in its calculations of the actual period for patent extension. In its application for patent extension, this applicant seeks 1,539 days of patent term extension.

Section 124.22 of the regulations provides that any interested person may request a revision of the regulatory review period determination within 30 days of the date of this notice (see **DATES** above). The request must specify the following:

- The identity of the product;
- The identity of the applicant for patent term restoration;
- The docket number of this notice; and
- The basis for the request for revision, including any documentary evidence.

Further, under § 124.30 of the regulations, any interested person may file a petition with APHIS, no later than 180 days after the date of this notice (see **DATES** above), alleging that a license applicant did not act with due diligence in seeking APHIS approval of the product during the regulatory review period. The filing, format, and content of a petition must be as described in the regulations in ''Subpart D–Due Diligence Petitions'' (§§ 124.30 through 124.33).

Authority: 35 U.S.C. 156.

Done in Washington, DC, this 21st day of July 2009.

Kevin Shea,

Acting Administrator, Animal and Plant Health Inspection Service.

[FR Doc. E9–17795 Filed 7–24–09; 8:45 am]

BILLING CODE 3410–34–P

DEPARTMENT OF COMMERCE

International Trade Administration

[A–570–951]

Certain Woven Electric Blankets From the People's Republic of China: Initiation of Antidumping Duty Investigation

AGENCY: Import Administration, International Trade Administration, Department of Commerce.

DATES: *Effective Date:* July 27, 2009.

FOR FURTHER INFORMATION CONTACT: Drew Jackson at (202) 482–4406 or Rebecca Pandolph at (202) 482–3627, AD/CVD Operations, Office 4, Import Administration, International Trade Administration, U.S. Department of Commerce, 14th Street and Constitution Avenue, NW., Washington, DC 20230.

SUPPLEMENTARY INFORMATION:

The Petition

On June 30, 2009, the Department of Commerce (''Department'') received an antidumping duty (''AD'') petition concerning imports of certain woven electric blankets (''woven electric blankets'') from the People's Republic of China (''PRC'') filed in proper form by Jarden Consumer Solutions (''Petitioner'').[1] On July 2, 2009, the Department issued a request to Petitioner for additional information and for clarification of certain areas of the Petition. Based on the Department's request, Petitioner filed a supplement to the Petition on July 8, 2009 (''Supplement to the Petition''). On July 10, 2009, the Department requested further information from Petitioner, including suggested refinements to the scope. Based on the Department's request, Petitioner filed a second supplement to the Petition on July 14, 2009 (''Second Supplement to the Petition''). Based on conversations with Petitioner regarding scope and certain other clarifications, Petitioner filed a supplement to the Petition on July 15, 2009 (''Third Supplement to the Petition'').[2] On July 17, 2009, we received a submission on behalf of a U.S. importer of woven electric blankets and its affiliated Chinese producer and exporter, both interested parties to this proceeding as defined in section 771(9)(A) of the Act. This submission challenged the definition of the domestic like product. Petitioner filed its reply to this challenge on July 20, 2009.

In accordance with section 732(b) of the Tariff Act of 1930, as amended (''Act''), Petitioner alleges that imports of woven electric blankets from the PRC are being, or are likely to be, sold in the United States at less than fair value, within the meaning of section 731 of the Act, and that such imports materially injure, and threaten further material injury to, an industry in the United States.

The Department finds that Petitioner filed the Petition on behalf of the domestic industry because Petitioner is an interested party, as defined in section 771(9)(C) of the Act, and has demonstrated sufficient industry support with respect to the investigation that it requests the Department to initiate (*see* ''Determination of Industry Support for the Petition'' below).

[1] *See* Petition for the Imposition of Antidumping Duties: Certain Woven Electric Blankets from the People's Republic of China, dated June 30, 2009 (''Petition'').

[2] *See* Memorandum from Dana Griffies to the File, regarding Petition for the Imposition of Antidumping Duties on Certain Woven Electric Blankets from the People's Republic of China: Suggested Scope Changes, dated July 16, 2009, and Memorandum from Howard Smith to the File, regarding Telephone Conversations with Petitioner, dated July 16, 2009, and Memorandum from Drew Jackson to the File, regarding Petition for the Imposition of Antidumping Duties on Certain Woven Electric Blankets from the People's Republic of China: Suggested Scope Changes, dated July 17, 2009.

Scope of Investigation

The products covered by this investigation are woven electric blankets from the PRC. For a full description of the scope of the investigation, please see the ''Scope of Investigation'' in Appendix I of this notice.

Comments on the Scope of Investigation

During our review of the Petition, we discussed the scope of the investigation with Petitioner to ensure that it is an accurate reflection of the products for which the domestic industry is seeking relief. Moreover, as discussed in the preamble to the Department's regulations (*Antidumping Duties; Countervailing Duties; Final Rule,* 62 FR 27296, 27323 (May 19, 1997)), we are setting aside a period for interested parties to raise issues regarding the product coverage of the scope. The Department encourages all interested parties to submit such comments by August 10, 2009, the first business day after twenty calendar days from the signature date of this notice. Comments should be addressed to Import Administration's APO/Dockets Unit, Room 1870, U.S. Department of Commerce, 14th Street and Constitution Avenue, NW., Washington, DC 20230. The period for scope consultations is intended to provide the Department with ample opportunity to consider all comments and to consult with parties prior to the issuance of the preliminary determination in this investigation.

Comments on Product Characteristics for the Antidumping Duty Questionnaire

We are requesting comments from interested parties regarding the appropriate physical characteristics of woven electric blankets to be reported in response to the Department's antidumping questionnaire. This information will be used to identify the key physical characteristics of the subject merchandise in order to more accurately report the relevant factors of production, as well as to develop appropriate product reporting criteria.

Interested parties may provide any information or comments that they believe are relevant to the development of an accurate listing of physical characteristics. Specifically, they may provide comments as to which characteristics are appropriate to use as (1) general product characteristics and (2) the product reporting criteria. We note that it is not always appropriate to use all product characteristics as product reporting criteria. We base product reporting criteria on meaningful commercial differences among products. In other words, while there may be some physical product characteristics utilized by manufacturers to describe woven electric blankets, it may be that only a select few product characteristics take into account commercially meaningful physical characteristics.

In order to consider the suggestions of interested parties in developing the product characteristics for the antidumping duty questionnaire, we must receive comments at the above-referenced address by August 10, 2009. Additionally, rebuttal comments must be received by August 17, 2009.

Determination of Industry Support for the Petition

Section 732(b)(1) of the Act requires that a petition be filed on behalf of the domestic industry. Section 732(c)(4)(A) of the Act provides that a petition meets this requirement if the domestic producers or workers who support the petition account for: (i) At least 25 percent of the total production of the domestic like product; and (ii) more than 50 percent of the production of the domestic like product produced by that portion of the industry expressing support for, or opposition to, the petition. Moreover, section 732(c)(4)(D) of the Act provides that, if the petition does not establish support of domestic producers or workers accounting for more than 50 percent of the total production of the domestic like product, the Department shall: (i) Poll the industry or rely on other information in order to determine if there is support for the petition, as required by subparagraph (A); or (ii) determine industry support using a statistically valid sampling method to poll the industry.

Section 771(4)(A) of the Act defines the ''industry'' as the producers as a whole of a domestic like product. Thus, to determine whether a petition has the requisite industry support, the statute directs the Department to look to producers and workers who produce the domestic like product. The International Trade Commission (''ITC''), which is responsible for determining whether ''the domestic industry'' has been injured, must also determine what constitutes a domestic like product in order to define the industry. While both the Department and the ITC must apply the same statutory definition regarding the domestic like product (section 771(10) of the Act), they do so for different purposes and pursuant to a separate and distinct authority. In addition, the Department's determination is subject to limitations of time and information. Although this may result in different definitions of the like product, such differences do not render the decision of either agency contrary to law.[3]

Section 771(10) of the Act defines the domestic like product as ''a product which is like, or in the absence of like, most similar in characteristics and uses with, the article subject to an investigation under this title.'' Thus, the reference point from which the domestic like product analysis begins is ''the article subject to an investigation,'' (*i.e.,* the class or kind of merchandise to be investigated, which normally will be the scope as defined in the petition).

With regard to the domestic like product, Petitioner did not offer a definition of domestic like product distinct from the scope of the investigation. On July 17, 2009, Biddeford Blankets, LLC (''Biddeford'') a U.S. importer of woven electric blankets, and Hung Kuo Electronics (Shenzhen) Company Limited (Hung Kuo), Biddeford's affiliated PRC producer and exporter of woven electric blankets, submitted a letter challenging the definition of the domestic like product, and requesting that the Department delay its initiation. Specifically, Biddeford and Hung Kuo argue that the domestic like product, as defined in the Petition, is overly narrow and should include, at a minimum, electric mattress pads. In addition, Biddeford and Hung Kuo state that Westpoint Stevens, a U.S. manufacturer and seller of electric mattress pads should be polled to determine whether it supports or opposes the Petition. Further, Biddeford and Hung Kuo request that the Department confirm Petitioner's claim that while non-woven electric blankets could be an acceptable substitute for woven electric blankets, non-woven electric blankets are not produced in the United States. Both Biddeford and Hung Kuo are interested parties to this proceeding as defined in section 771(9)(A) of the Act. On July 20, 2009, Petitioner filed its reply to this challenge, stating that Biddeford and Hung Kuo failed to provide any specific evidence supporting their claim, and limited their discussion to only a cursory analysis of the factors used to make a like product determination. We have analyzed these comments, and based on our analysis of the information submitted on the record, we have determined that woven electric blankets constitute a single domestic like product

[3] *See USEC, Inc.* v. *United States,* 132 F. Supp. 2d 1, 8 (CIT 2001), *citing Algoma Steel Corp. Ltd.* v. *United States,* 688 F. Supp. 639, 644 (CIT 1988), *aff'd* 865 F.2d 240 (Fed. Cir. 1989), *cert. denied* 492 U.S. 919 (1989).

and we have analyzed industry support in terms of that domestic like product.[4]

In determining whether Petitioner has standing under section 732(c)(4)(A) of the Act, we considered the industry support data contained in the Petition with reference to the domestic like product as defined in the ''Scope of Investigation'' section above and Appendix I of this notice. To establish industry support, Petitioner provided its 2008 production of the domestic like product and compared this to the estimated total production of the domestic like product for the entire domestic industry.[5] Petitioner calculated total domestic production based on its own production plus data estimates for two non-petitioning companies that may have been producing the domestic like product in the United States in 2008.[6]

Our review of the data provided in the Petition, supplemental submissions, and other information readily available to the Department, including a search of the Internet, indicates that Petitioner has established industry support. First, the Petition established support from domestic producers (or workers) accounting for more than 50 percent of the total production of the domestic like product and, as such, the Department is not required to take further action in order to evaluate industry support (*e.g.,* polling).[7] Second, the domestic producers (or workers) have met the statutory criteria for industry support under section 732(c)(4)(A)(i) of the Act because the domestic producers (or workers) who support the Petition account for at least 25 percent of the total production of the domestic like product.[8] Finally, the domestic producers (or workers) have met the statutory criteria for industry support under section 732(c)(4)(A)(ii) of the Act because the domestic producers (or workers) who support the Petition account for more than 50 percent of the production of the domestic like product produced by that portion of the industry expressing support for, or opposition to, the Petition. Accordingly, the Department determines that the Petition was filed on behalf of the domestic industry within the meaning of section 732(b)(1) of the Act.[9]

The Department finds that Petitioner filed the Petition on behalf of the domestic industry because Petitioner is an interested party (*e.g.,* domestic producer) as defined in section 771(9)(C) of the Act and has demonstrated sufficient industry support with respect to the antidumping investigation that it is requesting that the Department initiate.[10]

Allegations and Evidence of Material Injury and Causation

Petitioner alleged that the U.S. industry producing the domestic like product is being materially injured, or is threatened with material injury, by reason of the imports of the subject merchandise sold at less than normal value (''NV''). In addition, Petitioner alleged that subject imports exceed the negligibility threshold provided for under section 771(24)(A) of the Act.

Petitioner contended that the industry's injured condition is illustrated by reduced market share, increased import penetration, underselling and price depressing and suppressing effects, lost sales and revenue, reduced production, shipments, capacity, and capacity utilization, reduced employment, and an overall decline in financial performance.[11] We have assessed the allegations and supporting evidence regarding material injury, threat of material injury, and causation, and have determined that these allegations are properly supported by adequate evidence and meet the statutory requirements for initiation.[12]

Period of Investigation

In accordance with 19 CFR 351.204(b)(1), because the Petition was filed on June 30, 2009, the anticipated period of investigation (''POI'') is October 1, 2008, through March 31, 2009.

Allegations of Sales at Less Than Fair Value

The following is a description of the allegation of sales at less than fair value upon which the Department has based its decision to initiate an investigation of woven electric blankets from the PRC. The sources of data for the deductions and adjustments relating to U.S. price and NV are discussed in the Initiation Checklist. Should the need arise to use any of this information as facts available under section 776 of the Act, we may reexamine the information and revise the margin calculations, if appropriate.

U.S. Price

Petitioner obtained constructed export prices (''CEP'') [13] for woven electric blankets in four standard sizes: Twin, full, queen, and king. These prices were based on U.S. offers for sale of woven electric blankets manufactured in the PRC.[14] Petitioner presented an affidavit attesting that the offers were made during the POI.[15]

To calculate the net U.S. price, Petitioner did not deduct from the starting U.S. prices any CEP selling expenses or movement expenses other than the U.S. customs duty of 11.40 percent that is imposed on woven electric blankets upon importation into the United States.[16] This approach is conservative in that it does not understate the net U.S. price.

Normal Value

According to Petitioner, since the PRC is a non-market economy (''NME'') country, it based NV on factors of production and surrogate values.[17] In accordance with section 771(18)(C)(i) of the Act, the presumption of NME status remains in effect until revoked by the Department. The presumption of NME status for the PRC has not been revoked by the Department and, therefore, remains in effect for purposes of the initiation of this investigation.[18] Accordingly, the NV of the product is appropriately based on factors of production valued in a surrogate market economy country, in accordance with section 773(c) of the Act. In the course of this investigation, all parties will have the opportunity to provide relevant information related to the issues of the PRC's NME status and the granting of separate rates to individual exporters.

Petitioner used India as the surrogate country because it claimed India is at a level of economic development comparable to that of the PRC and is a significant producer of woven electric

[4] For a discussion of the domestic like product analysis in this case, *see* Antidumping Duty Investigation Initiation Checklist: Certain Woven Electric Blankets from the PRC (''Initiation Checklist'') at Attachment II (''Industry Support''), dated concurrently with this notice and on file in the Central Records Unit (''CRU''), Room 1117 of the main Department of Commerce building.

[5] *See* Petition, at 2–3, Exhibit 2, and Supplement to the Petition, at 3–4, and Exhibit S1.

[6] *See id; see also* Initiation Checklist at Attachment II, Industry Support.

[7] *See* Section 732(c)(4)(D) of the Act, and Initiation Checklist at Attachment II.

[8] *See* Initiation Checklist at Attachment II.

[9] *See id.*

[10] *See id.*

[11] *See* Petition, at 11–12, 15–26, Exhibits 2, 18, 20–24, and Supplement to the Petition, at 11, and Exhibits S12–S15.

[12] *See* Initiation Checklist at Attachment III.

[13] *See* Initiation Checklist at 6 for details.

[14] *See* Petition, at 8, and Exhibit 2, and Supplement to the Petition, at Exhibit S1, and Third Supplement to the Petition, at 2, and Exhibits S3–1 and S3–2.

[15] *See* Initiation Checklist for further discussion.

[16] *See* Petition, at 8, and Exhibit 2.

[17] *See* Petition, at 7.

[18] *See* Petition, at 7; *see also* Memorandum from the Office of Policy to David M. Spooner, Assistant Secretary for Import Administration, regarding The People's Republic of China Status as a Non-Market Economy, dated May 15, 2006. This document is available online at *http://ia.ita.doc.gov/download/prc-nme-status/prc-nme-status-memo.pdf*.

blankets.[19] In support of this claim, Petitioner referenced the Department's previous findings that India is at a level of development comparable to the PRC,[20] and provided the names of a number of Indian manufacturers/suppliers of electric blankets, and U.N. data showing that India exported 53.197 metric tons of electric blankets during 2007.[21]

After examining the information provided by Petitioner, the Department has determined that the use of India as a surrogate country is appropriate for purposes of initiation. However, after initiation of the investigation, interested parties will have the opportunity to submit comments regarding surrogate country selection and, pursuant to 19 CFR 351.301(c)(3)(i), will be provided an opportunity to submit publicly available information to value factors of production within 40 days after the date of publication of the preliminary determination.

Petitioner calculated NVs and dumping margins using the Department's NME methodology as required by 19 CFR 351.202(b)(7)(i)(C) and 19 CFR 351.408. Petitioner calculated NVs for woven electric blankets of four standard sizes: Twin, full, queen, and king.[22] Petitioner asserted that the production process and consumption quantities it used in manufacturing woven electric blankets are similar to those used by the PRC manufacturer of the woven electric blankets for which it obtained the U.S. price quotes noted above.[23] Petitioner stated that it employed a conservative methodology in calculating NV by only valuing the major components of woven electric blankets, namely the shell of woven fabric, binding, wire, and controller.[24]

Petitioner valued the factors of production using reasonably available, public surrogate country data, including Indian import data from the Indian Ministry of Commerce, published in the Monthly Statistics of Foreign Trade of India as compiled by the Global Trade Atlas (''GTA''), the internet version of the Word Trade Atlas, available at *http://www.gtis.com/gta.* Petitioner used GTA data for the period August 2008, through January 2009, the most recent six months of data available at the time of the filing of the Petition.[25] In addition, Petitioner used exchange rates, as reported by the Federal Reserve, to convert Indian Rupees to U.S. Dollars.[26]

Petitioner valued shells of woven fabric, binding, wire, controllers, and packing cartons using GTA data.[27] Petitioner valued direct labor and packing labor using the wage rate data published on the Department's Web site, at *http://ia.ita.doc.gov/wages/05wages/05wages-051608.html#table1.*[28] Petitioner valued electricity using Indian electricity rates from the Central Electricity Authority in India for 2006.[29]

Petitioner valued brokerage and handling costs using an average of costs incurred by Essar Steel Limited, Agro Dutch Industries Limited, and Kerjiwal Paper Ltd., three Indian companies that participated in antidumping duty proceedings before the Department. Petitioner adjusted these values for inflation using wholesale price index data published by the International Monetary Fund, which is available online at *http://www.imfstatistics.org/imf/.*[30]

Petitioner based factory overhead, selling, general and administrative expenses, and profit, on financial data for large public limited companies as reported by the Reserve Bank of India (''RBI'').[31] Although Petitioner searched the internet, fee-based databases (*e.g.,* Dun and Bradstreet, Hoovers) and records of the Indian Ministry of Company Affairs, Petitioner was unable to locate company-specific financial data for, or aggregate industry financial data that specifically include, Indian producers of woven electric blankets.[32] Given that the only financial data reasonably available to Petitioner at this time are the RBI data, the Department has accepted the use of RBI data for the purposes of initiation. *See* Section 732 (b)(1) of the Act.

Fair-Value Comparisons

The data provided by Petitioner provide a reason to believe that imports of woven electric blankets from the PRC are being, or are likely to be, sold in the United States at less than fair value. Based on comparisons of net U.S. prices to NVs, Petitioner calculated estimated dumping margins ranging from 128.32 percent to 394.55 percent.[33]

Initiation of Antidumping Investigation

Based upon our examination of the Petition concerning woven electric blankets from the PRC and other information reasonably available to the Department, the Department finds that the Petition meets the requirements of section 732 of the Act. Therefore, we are initiating an antidumping duty investigation to determine whether imports of woven electric blankets from the PRC are being, or are likely to be, sold in the United States at less than fair value. In accordance with section 733(b)(1)(A) of the Act, unless postponed, we will make our preliminary determination no later than 140 days after the date of this initiation.

Targeted-Dumping Allegations

On December 10, 2008, the Department issued an interim final rule for the purpose of withdrawing 19 CFR 351.414(f) and (g), the regulatory provisions governing the targeted-dumping analysis in antidumping duty investigations, and the corresponding regulation governing the deadline for targeted-dumping allegations, 19 CFR 351.301(d)(5).[34] The Department stated that ''{w}ithdrawal will allow the Department to exercise the discretion intended by the statute and, thereby, develop a practice that will allow interested parties to pursue all statutory avenues of relief in this area.'' [35]

In order to accomplish this objective, interested parties that wish to make a targeted-dumping allegation in this investigation pursuant to section 777A(d)(1)(B) of the Act, should submit such an allegation to the Department no later than 45 days before the scheduled date of the preliminary determination.

Respondent Selection

The Department will request quantity and value information from the exporters and producers listed with complete contact information in the Petition. The quantity and value data received from NME exporters/producers

[19] *See* Petition, at 8, and Supplement to the Petition, at 5 and Exhibit S5.

[20] *See* Petition, at 8.

[21] *See* Supplement to the Petition, at 5 and Exhibit S5.

[22] *See* Supplement to the Petition, at Exhibit S4; *see also* Second Supplement to the Petition, at Exhibit S2–3.

[23] *See* Petition, at 9, and Exhibit 8, and Supplement to the Petition, at 9, and Exhibit S1.

[24] *See* Petition, at 8.

[25] *See* Petition, at 9–10, and Exhibit 10, and Supplement to the Petition, at 5–7, and Exhibit S7, and Second Supplement to the Petition, at 2, and Exhibits S2–1 and S2–3.

[26] *See* Petition, at 9, and Supplement to the Petition, at 7, and Exhibit S8.

[27] *See* Petition, at 9, and Exhibits 9 and 10; *see also* Supplement to the Petition, at 5–7, and Exhibit S6.

[28] *See* Petition, at 10, and Exhibit 12.

[29] *See* Petition, at 10, and Exhibits 14 and 15; *see also* Supplement to the Petition, at 7–8, and Exhibits S4 and S7.

[30] *See* Petition, at 10, and Exhibit 13, and Second Supplement to the Petition, at 2–3, and Exhibit S2–4.

[31] *See* Supplement to the Petition, at 9–10, and Exhibit S11.

[32] *See* Petition, at 10–11 and Exhibit 16, and Supplement to Petition, at 9–10, and Second Supplement to the Petition, at 3.

[33] *See* Second Supplement to Petition, at S2–3.

[34] *See Withdrawal of the Regulatory Provisions Governing Targeted Dumping in Antidumping Duty Investigations,* 73 FR 74930 (December 10, 2008).

[35] *See id.* at 74931.

will be used to select mandatory respondents.

The Department requires respondents to submit a response to both the quantity and value questionnaire and the separate-rate application by the respective deadlines in order to receive consideration for separate-rate status.[36] Appendix II of this notice contains the quantity and value questionnaire that must be submitted by all NME exporters/producers no later than August 11, 2009. In addition, the Department will post the quantity and value questionnaire along with filing instructions on its website, at *http://ia.ita.doc.gov/ia-highlights-and-news.html.*

Separate Rates

In order to obtain separate-rate status in an NME investigation, exporters and producers must submit a separate-rate status application.[37] The specific requirements for submitting the separate-rate application in this investigation are outlined in detail in the application itself, which will be available on the Department's Web site at *http://ia.ita.doc.gov/ia-highlights-and-news.html* on the date of publication of this initiation notice in the **Federal Register.** The separate-rate application will be due sixty (60) days from the date of publication of this initiation notice in the **Federal Register**. As noted in the ''Respondent Selection'' section above, the Department requires that respondents submit a response to both the quantity and value questionnaire and the separate rate application by the respective deadlines in order to receive consideration for separate rate status.

Use of Combination Rates in an NME Investigation

The Department will calculate combination rates for certain respondents that are eligible for a separate rate in this investigation. The Separate Rates/Combination Rates Bulletin states:

{w}hile continuing the practice of assigning separate rates only to exporters, all separate rates that the Department will now assign in its NME investigations will be specific to those producers that supplied the exporter during the period of investigation. Note, however, that one rate is calculated for the exporter and all of the producers which supplied subject merchandise to it during the period of investigation. This practice applies both to mandatory respondents receiving an individually calculated separate rate as well as the pool of non-investigated firms receiving the weighted-average of the individually calculated rates. This practice is referred to as the application of combination rates because such rates apply to specific combinations of exporters and one or more producers. The cash-deposit rate assigned to an exporter will apply only to merchandise both exported by the firm in question and produced by a firm that supplied the exporter during the period of investigation.[38]

Distribution of Copies of the Petition

In accordance with section 732(b)(3)(A) of the Act and 19 CFR 351.202(f), a copy of the public version of the Petition has been provided to the representatives of the Government of the PRC. Because of the large number of producers/exporters identified in the Petition, the Department considers the service of the public version of the Petition to the foreign producers/exporters satisfied by the delivery of the public version to the Government of the PRC, consistent with 19 CFR 351.203(c)(2).

ITC Notification

We have notified the ITC of our initiation, as required by section 732(d) of the Act.

Preliminary Determination by the ITC

The ITC will preliminarily determine, no later than August 14, 2009, whether there is a reasonable indication that imports of woven electric blankets from the PRC materially injure, or threaten material injury to, a U.S. industry. A negative ITC determination covering all classes or kinds of merchandise covered by the Petition would result in the investigation being terminated. Otherwise, this investigation will proceed according to statutory and regulatory time limits.

This notice is issued and published pursuant to section 777(i) of the Act.

Dated: July 20, 2009.

Ronald K. Lorentzen,

Acting Assistant Secretary for Import Administration.

Appendix I—Scope of the Investigation

The scope of this investigation covers finished, semi-finished, and unassembled woven electric blankets, including woven electric blankets commonly referred to as throws, of all sizes and fabric types, whether made of man-made fiber, natural fiber or a blend of both. Semi-finished woven electric blankets and throws consist of shells of woven fabric containing wire. Unassembled woven electric blankets and throws consist of a shell of woven fabric and one or more of the following components when packaged together or in a kit: (1) Wire; (2) controller(s). The shell of woven fabric consists of two sheets of fabric joined together forming a ''shell.'' The shell of woven fabric is manufactured to accommodate either the electric blanket's wiring or a subassembly containing the electric blanket's wiring (*e.g.,* wiring mounted on a substrate).

A shell of woven fabric that is not packaged together, or in a kit, with either wire, controller(s), or both, is not covered by this investigation even though the shell of woven fabric may be dedicated solely for use as a material in the production of woven electric blankets.

The finished, semi-finished and unassembled woven electric blankets and throws subject to this investigation are currently classifiable under subheading 6301.10.0000 of the Harmonized Tariff Schedule of the United States (''HTSUS''). Although the HTSUS subheading is provided for convenience and customs purposes, only the written description of the scope is dispositive.

Appendix II—Office of AD/CVD Enforcement

Quantity and Value Questionnaire

Requester(s): {insert name of company}:

_____

{company address}

_____

{contact name and title}

_____

{contact telephone number}

_____

{contact fax number}

_____

{contact e-mail address}

Representation: {insert name of counsel and law firm and contact info}

Case: Certain Woven Electric Blankets from the People's Republic of China.

Period of Investigation: October 1, 2008 through March 31, 2009.

Publication Date of Initiation: {insert publication date}.

Officials in Charge:

Howard Smith, Program Manager, AD/CVD Operations, Office 4, Telephone: (202) 482–5193, Fax: (202) 482–5105, E-mail Address: *Howard_Smith@ita.doc.gov.*

Drew Jackson, International Trade Compliance Analyst, AD/CVD Operations, Office 4, Telephone: (202)

[36] *See Circular Welded Austenitic Stainless Pressure Pipe from the People's Republic of China: Initiation of Antidumping Duty Investigation,* 73 FR 10221, 10225 (February 26, 2008); and *Initiation of Antidumping Duty Investigation: Certain Artist Canvas From the People's Republic of China,* 70 FR 21996, 21999 (April 28, 2005).

[37] *See* Import Administration Policy Bulletin, Number: 05.1, ''Separate-Rates Practice and Application of Combination Rates in Antidumping Investigations involving Non-Market Economy Countries,'' dated April 5, 2005, available on the Department's website at *http://ia.ita.doc.gov/policy/bull05-1.pdf* (''Policy Bulletin, Number: 05.1''); *see also Certain Circular Welded Carbon Quality Steel Line Pipe From the Republic of Korea and the People's Republic of China: Initiation of Antidumping Duty Investigations,* 73 FR 23188, 23193 (April 29, 2008) (''*Certain Circular Welded Carbon Quality Steel Line Pipe from the PRC''*).

[38] *See* Policy Bulletin, Number: 05.1; *see also Certain Circular Welded Carbon Quality Steel Line Pipe from the PRC,* 73 FR at 23193.

482–4406, Fax: (202) 482–5105, E-mail Address: *Drew_Jackson@ita.doc.gov.*
Rebecca Pandolph, International Trade Compliance Analyst, AD/CVD Operations, Office 4, Telephone: 202–482–3627, Fax: (202) 482–5105, E-mail Address: *Rebecca.Pandolph@mail.doc.gov.*

Filing Address: U.S. Department of Commerce, International Trade Administration, Import Administration, APO/Dockets Unit, Room 1870, 1401 Constitution Avenue, NW., Washington, DC 20230, Attn: Drew Jackson, Rebecca Pandolph.

On July 21, 2009, the Department of Commerce (''Department'') announced its decision to initiate an antidumping duty investigation to determine whether certain woven electric blankets from the PRC are being sold in the United States at less than fair value during the period of investigation of October 1, 2008 through March 31, 2009.

Section 777A(c)(1) of the Tariff Act of 1930, as amended (''Act''), directs the Department to calculate individual dumping margins for each known exporter and producer of the subject merchandise. Where it is not practicable to examine all known producers/exporters of subject merchandise, as is the case in investigation, section 777A(c)(2) of the Act permits the Department to examine either (1) a sample of exporters, producers or types of products that is statistically valid based on the information available at the time of selection; or (2) exporters and producers accounting for the largest volume of the subject merchandise from the exporting country that can be reasonably examined.

In advance of the issuance of the full antidumping questionnaire, we ask that you respond to Attachments I of this Quantity and Value Questionnaire requesting information on production and the quantity and U.S. dollar sales value of all your sales to the United States during the period 1, 2008 through March 31, 2009, covered by the scope of this investigation (see Attachment II), produced in the PRC.[39] A full and accurate response to the Quantity and Value Questionnaire from all participating respondents is necessary to ensure that the Department has the requisite information to appropriately select mandatory respondents.

The Department is also requiring all firms that wish to qualify for separate-rate status in this investigation to complete a separate-rate status application as described in the *Notice of Initiation.* In other words, the Department will not give consideration to any separate-rate status application made by parties that fail to timely respond to the Quality and Value Questionnaire or fail to timely submit the requisite separate-rate status application.

To allow for the possibility of sampling and to complete this segment within the statutory time frame, the Department will be limited in its ability to extend the deadline for the response to the Quantity and Value Questionnaire.

A definition of the scope of the merchandise subject to this review is included in Attachment II, and general instructions for responding to this Quantity and Value Questionnaire are contained in Attachment III. Your response to this questionnaire may be subject to on-site verification by Department officials.

Format for Reporting Quantity and Value of Sales

In providing the information in the chart below, please provide the total quantity in pieces/units, and kilograms, and total value (in U.S. dollars) of all your sales to the United States during the period 1, 2008 through March 31, 2009, covered by the scope of this investigation (see Attachment II), produced in the PRC.[40]

- Please include only sales exported by your company directly to the United States.
- Please do not include any sales of subject merchandise manufactured in Hong Kong in your figures.

Additionally, if you believe that you should be treated as a single entity along with other named exporters, please complete the chart, below, both in the aggregate for all named parties in your group and, in separate charts, individually for each named entity. Please label each chart accordingly.

Market: United States	Total quantity in terms of number of blankets and/or throws[41]	Total quantity[42] (in kilograms)	Terms of sale[43]	Total value[44] ($U.S.)
1. Export Price[45]				
2. Constructed Export Price[46]				
3. Further Manufactured[47]				
Total				

[41] If any conversions were used, please provide the conversion formula and source.
[42] If any conversions were used, please provide the conversion formula and source.
[43] To the extent possible, sales values should be reported based on the same terms (e.g., FOB).
[44] Values should be expressed in U.S. dollars. Indicate any exchange rates used and their respective dates and sources.
[45] Generally, a U.S. sale is classified as an export price sale when the first sale to an unaffiliated person occurs before the goods are imported into the United States.
[46] Generally, a U.S. sale is classified as a constructed export price sale when the first sale to an unaffiliated person occurs after importation. However, if the first sale to the unaffiliated person is made by a person in the United States affiliated with the foreign exporter, constructed export price applies even if the sale occurs prior to importation. Do not report the sale to the affiliated party in the United States, rather report the sale made by the affiliated party to the unaffiliated customer in the United States. If you have further manufactured sales, please report them under Item 3, rather than under Item 2.
[47] ''Further manufactured'' refers to merchandise that undergoes further manufacture or assembly in the United States before sale to the first unaffiliated customer.

[39] If your company did not produce the merchandise under investigation, we request that these questions be immediately forwarded to the company that produces the merchandise and supplies it to you or your customers.

[40] Please use the invoice date when determining which sales to include within the period noted above. Generally, the Department uses invoice date as the date of sale, as that is when the essential terms of sale are set. If you believe that another date besides the invoice date would provide a more accurate representation of your company's sales during the designated period, please report sales based on that date and provide a full explanation.

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BILLING CODE 3510–DS–P

DEPARTMENT OF COMMERCE

International Trade Administration

A–570–898

Chlorinated Isocyanurates from the People's Republic of China: Preliminary Results of June 2008 through November 2008 Semi–Annual New Shipper Review

AGENCY: Import Administration, International Trade Administration, Department of Commerce.

SUMMARY: On January 30, 2009, the Department of Commerce (''Department'') initiated a new shipper review (''NSR'') of the antidumping duty order on chlorinated isocyanurates (''chlorinated isos'') from the People's Republic of China (''PRC''). The period of review (''POR'') for this NSR is June 1, 2008, through November 30, 2008. This NSR covers one producer/exporter of the subject merchandise, Juancheng Kangtai Chemical Company, Ltd. (''Kangtai''). We preliminarily determine that Kangtai did not make sales in the United States at prices below normal value (''NV''). If these preliminary results are adopted in our final results of review, we will instruct U.S. Customs and Border Protection (''CBP'') to liquidate entries of merchandise exported by Kangtai, during the POR without regard to antidumping duties. We invite interested parties to comment on these preliminary results.

EFFECTIVE DATE: July 27, 2009.

FOR FURTHER INFORMATION CONTACT: Lilit Astvatsatrian or Charles Riggle, AD/CVD Operations, Office 8, Import Administration, International Trade Administration, U.S. Department of Commerce, 14th Street and Constitution Avenue, NW, Washington, DC 20230; telephone: (202) 482–6412 or (202) 482–0650, respectively.

SUPPLEMENTARY INFORMATION:

Background

On June 24, 2005, the Department published in the **Federal Register** the antidumping duty order on chlorinated isos from the PRC.[1] On December 22, 2008, Kangtai, a foreign producer/exporter of subject merchandise, requested that the Department conduct an NSR of sales of its subject merchandise during the POR. On January 30, 2009, the Department initiated an NSR of Kangtai.[2]

On February 2, 2009, the Department issued its antidumping duty questionnaire to Kangtai. On February 11, 2009, the Department requested that the Office of Policy provide a list of surrogate countries for this NSR.[3] On February 12, 2009, the Office of Policy issued its list of surrogate countries.[4]

On April 24, 2009, the Department issued a letter to interested parties seeking comments on surrogate country selection and surrogate values. On May 15, 2009, Kangtai submitted comments regarding the selection of a surrogate country.

On February 20, 2009, Kangtai submitted its section A questionnaire response (''AQR''). On March 11, 2009, Kangtai submitted its sections C and D questionnaire responses (''CQR and DQR''). On March 27, 2009, the Department issued a supplemental questionnaire to Kangtai. On April 14, 2009, Kangtai submitted its supplemental questionnaire response. On May 29, 2009, the Department issued a supplemental questionnaire to Kangtai. On June 12, 2009, Kangtai submitted its supplemental questionnaire response. On June 9, 2009, the Department issued a supplemental questionnaire to Kangtai. On June 22, 2009, Kangtai submitted its supplemental questionnaire response. On June 26, 2009, the Department issued a supplemental questionnaire to Kangtai. On July 6, 2009, Kangtai submitted its supplemental questionnaire response.

Scope of the Order

The products covered by the order are chlorinated isos, as described below:

Chlorinated isos are derivatives of cyanuric acid, described as chlorinated s–triazine triones. There are three primary chemical compositions of chlorinated isos: (1) trichloroisocyanuric acid ($Cl_3(NCO)_3$), (2) sodium dichloroisocyanurate (dihydrate) ($NaCl_2(NCO)_3(2H_2O)$, and (3) sodium dichloroisocyanurate (anhydrous) ($NaCl_2(NCO)_3$). Chlorinated isos are available in powder, granular, and tableted forms. The order covers all chlorinated isos. Chlorinated isos are currently classifiable under subheadings 2933.69.6015, 2933.69.6021, 2933.69.6050, 3808.40.50, 3808.50.40 and 3808.94.50.00 of the Harmonized Tariff Schedule of the United States (''HTSUS''). The tariff classification 2933.69.6015 covers sodium dichloroisocyanurates (anhydrous and dihydrate forms) and trichloroisocyanuric acid. The tariff classifications 2933.69.6021 and 2933.69.6050 represent basket categories that include chlorinated isos and other compounds including an unfused triazine ring. Although the HTSUS subheadings are provided for convenience and customs purposes, the written description of the scope of the order is dispositive.

Non–Market Economy Country

The Department has treated the PRC as a non–market economy (''NME'') country in all past antidumping duty investigations and administrative reviews and continues to do so in this case.[5] No interested party in this case has argued that we should do otherwise. Designation as an NME country remains in effect until it is revoked by the Department. *See* Section 771(18)(C)(i) of the Tariff Act of 1930, as amended (''Act'').

Surrogate Country

When the Department is reviewing imports from an NME country, section 773(c)(1) of the Act directs it, in most instances, to base NV on the NME producer's factors of production (''FOPs''). The Act further instructs that valuation of the FOPs shall be based on the best available information in the surrogate market economy country or countries considered to be appropriate by the Department. *See* section 773(c)(1) of the Act. When valuing the FOPs, the Department shall utilize, to the extent possible, the prices or costs of FOPs in one or more market economy countries that are: (1) at a level of economic development comparable to that of the NME country; and (2) significant producers of comparable merchandise. *See* section 773(c)(4) of the Act. Further, the Department normally values all FOPs in a single surrogate country. *See* 19 CFR 351.408(c)(2). The sources of the surrogate factor values are discussed

[1] *See Notice of Antidumping Duty Order: Chlorinated Isocyanurates from the People's Republic of China*, 70 FR 36561 (June 24, 2005).

[2] *See Chlorinated Isocyanurates From the People's Republic of China: Initiation of New Shipper Review*, 74 FR 5639 (January 30, 2009).

[3] *See* Memorandum regarding ''Request for Surrogate Country Selection: 06/2008 - 11/2008 New Shipper Review of the Antidumping Duty Order on Chlorinated Isocyanurates from the People's Republic of China'' (February 11, 2009).

[4] *See* the Memorandum regarding ''Request for a List of Surrogate Countries for a New Shipper Review of the Antidumping Duty Order on Chlorinated Isocyanurates from the People's Republic of China'' (February 12, 2009) (''Surrogate Country List'').

[5] *See, e.g., Chlorinated Isocyanurates from the People's Republic of China: Preliminary Results of Antidumping Duty Administrative Review*, 74 FR 27104, 27105 (June 8, 2009) (unchanged in the final results); and *Folding Metal Tables and Chairs from the People's Republic of China: Preliminary Results of Antidumping Duty Administrative Review*, 74 FR 32118, 32120 (July 7, 2009) (unchanged in the final results).

under the ''Normal Value'' section below and in the Surrogate Value Memorandum, which is on file in the Central Records Unit (''CRU''), Room 1117 of the main Department building.[6]

In examining which country to select as its primary surrogate for this proceeding, the Department first determined that India, the Philippines, Indonesia, Colombia, Thailand, and Peru are countries comparable to the PRC in terms of economic development. *See* Surrogate Country List. On April 24, 2009, the Department issued a request for interested parties to submit comments on surrogate country selection. On May 15, 2009, Kangtai submitted comments regarding the selection of a surrogate country.

Kangtai argues that the Department should continue to use India as a surrogate country, as it has in all past administrative reviews for chlorinated isos. No other party submitted any comments regarding the selection of a surrogate country. The Department determined that India is the appropriate surrogate country for use in this NSR. The Department based its decision on the following facts: (1) India is at a level of economic development comparable to that of the PRC; (2) India is a significant producer of comparable merchandise, *i.e.*, calcium hypochlorite; and (3) India provides the best opportunity to use quality, publicly available data to value the FOPs. On the record of this review, we have usable surrogate financial data from India, but no such surrogate financial data from any other potential surrogate country.

Therefore, because India best represents the experience of producers of comparable merchandise operating in a surrogate country at a level of economic development comparable to the PRC, we have selected India as the surrogate country and, accordingly, have calculated NV using Indian prices to value the respondent's FOPs, when available and appropriate. *See* Surrogate Value Memorandum. We have obtained and relied upon publicly available information wherever possible.

In accordance with 19 CFR 351.301(c)(3)(ii), interested parties may submit publicly available information to value FOPs until 20 days after the date of publication of the preliminary results.[7]

Affiliation

Section 771(33) of the Act states that the Department considers the following entities to be affiliated: (A) Members of a family, including brothers and sisters (whether by whole or half blood), spouse, ancestors, and lineal descendants; (B) Any officer or director of an organization and such organization; (C) Partners; (D) Employer and employee; (E) Any person directly or indirectly owning, controlling, or holding with power to vote, five percent or more of the outstanding voting stock or shares of any organization and such organization; (F) Two or more persons directly or indirectly controlling, controlled by, or under common control with, any person; and (G) Any person who controls any other person and such other person.

For purposes of affiliation, section 771(33) of the Act states that a person shall be considered to control another person if the person is legally or operationally in a position to exercise restraint or direction over the other person. In order to find affiliation between companies, the Department must find that at least one of the criteria listed above is applicable to the respondents.

To the extent that the affiliation provisions in section 771(33) of the Act do not conflict with the Department's application of separate rates and the statutory NME provisions in section 773(c) of the Act, the Department will determine that exporters and/or producers are affiliated if the facts of the case support such a finding.[8]

Based on our examination of the evidence presented in Kangtai's submissions, we preliminarily determine that Kangtai and its supplier (Company A)[9] are affiliated parties within the meaning of section 771(33) of the Act.[10] Based on our examination of the evidence presented in Kangtai's questionnaire responses, we have determined that the owners of Kangtai and its supplier of an intermediate product are members of a family (siblings) and these parties are affiliated under 771(33)(A) of the Act.

19 CFR 351.401(f) requires that affiliated producers of subject merchandise be treated as a single entity where those producers have production facilities for similar or identical products that would not require substantial retooling of either facility in order to restructure manufacturing priorities, and where there is a significant potential for the manipulation of price or production. Based on record evidence, we find that Kangtai's affiliated supplier has production facilities to produce similar merchandise without the need for substantial retooling of its facility. In addition, based on the record evidence, we find that there is a significant potential for manipulation of price and production as: 1) there are significant transactions between Kangtai and its affiliated supplier; and 2) the operations of both entities are closely intertwined. Therefore, we have treated these companies as a single entity and used the affiliated supplier's upstream FOPs to calculate Kangtai's dumping margin for the purposes of these preliminary results. Due to the proprietary nature of this issue, please see the Affiliation Memo for a detailed discussion of the facts and our findings.

Separate Rates

In proceedings involving NME countries, the Department has a rebuttable presumption that all companies within the country are subject to government control and thus should be assessed a single antidumping duty rate. It is the Department's policy to assign all exporters of merchandise subject to review in an NME country this single rate unless an exporter can demonstrate that it is sufficiently independent so as to be entitled to a separate rate. Exporters can demonstrate this independence through the absence of both *de jure* and *de facto* government control over export activities. The Department analyzes each entity exporting the subject merchandise under a test arising from the *Notice of Final Determination of Sales at Less*

[6] *See* Memorandum regarding ''Preliminary Results of the 2007-2008 Administrative Review of Chlorinated Isocyanurates from the People's Republic of China: Surrogate Value Memorandum'' (July 20, 2009) (''Surrogate Value Memorandum'').

[7] In accordance with 19 CFR 351.301(c)(1), for the final results of this administrative review, interested parties may submit factual information to rebut, clarify, or correct factual information submitted by an interested party less than ten days before, on, or after, the applicable deadline for submission of such factual information. However, the Department notes that 19 CFR 351.301(c)(1) permits new information only insofar as it rebuts, clarifies, or corrects information placed on the record. The Department generally will not accept the submission of additional, previously absent-from-the-record alternative surrogate value information pursuant to 19 CFR 351.301(c)(1). *See Glycine from the People's Republic of China: Final Results of Antidumping Duty Administrative Review and Final Rescission, in Part*, 72 FR 58809 (October 17, 2007) and accompanying Issues and Decision Memorandum at Comment 2.

[8] *See Certain Preserved Mushrooms From the People's Republic of China: Preliminary Results of Sixth New Shipper Review and Preliminary Results and Partial Rescission of Fourth Antidumping Duty Administrative Review*, 69 FR 10410, 10413 (March 5, 2004) (unchanged in the final results).

[9] Due to the proprietary treatment of the affiliated supplier's name, we are referring to the supplier as Company A.

[10] *See* Memorandum to the File ''Preliminary Results of the New Shipper Review of the Antidumping Duty Order on Chlorinated Isocyanurates from the People's Republic of China: Affiliation and Collapsing of Juancheng Kangtai Chemical Co., Ltd and its Supplier.'' (July 20, 2009) (''Affiliation Memo'').

Than Fair Value: Sparklers from the People's Republic of China, 56 FR 20588, at Comment 1 (May 6, 1991) (''*Sparklers*''), as further developed in *Notice of Final Determination of Sales at Less Than Fair Value: Silicon Carbide from the People's Republic of China*, 59 FR 22585, 22587 (May 2, 1994) (''*Silicon Carbide*''). See also Policy Bulletin 03.2: Combination Rates in New Shipper Reviews, available at <http://ia.ita.doc.gov/policy/bull03–2.html>, stating:

> The bonding privilege in effect during a new shipper review, along with the prospective cash deposit rate established in that review for the new shipper, is applicable only with respect to merchandise produced/supplied and exported by the parties who have met all necessary certification requirements, who successfully participate in the review, and whose sales form the basis for the Department's analysis in the new shipper review. Where a party certifies that it is both the producer and exporter of subject merchandise pursuant to section 351.214(b)(2)(i) of the Department's regulations, the bonding option and post–final new shipper cash deposit rate will apply only with respect to subject merchandise produced and exported by this entity. Where a party is the exporter but not the producer of subject merchandise, the bonding option and post–final new shipper deposit rate will apply only with respect to subject merchandise exported by the entity requesting the review and produced or supplied[9] by those parties that provided the necessary certification under section 351.214(b)(2)(ii) and cooperated in responding to any information requests during the new shipper review.[11]

Kangtai is a wholly Chinese–owned company and is located in the PRC. Therefore, the Department must analyze whether it can demonstrate the absence of both *de jure* and *de facto* government control over its export activities.

Absence of De Jure Control

The Department considers the following *de jure* criteria in determining whether an individual company may be granted a separate rate: (1) An absence of restrictive stipulations associated with an individual exporter's business and export licenses; (2) any legislative enactments decentralizing control of companies; and (3) other formal measures by the government decentralizing control of companies. *See Sparklers*, 56 FR at 20589.

The evidence provided by Kangtai supports a preliminary finding of *de jure* absence of government control based on the following: (1) an absence of restrictive stipulations associated with the individual exporter's business and export licenses; (2) there are applicable legislative enactments decentralizing control of the companies; and (3) there are formal measures by the government decentralizing control of companies. *See* Kangtai's AQR at Exhibit A3.1–A3.3.

Absence of De Facto Control

Typically, the Department considers four factors in evaluating whether each respondent is subject to *de facto* government control of its export functions: (1) Whether the export prices are set by or are subject to the approval of a government agency; (2) whether the respondent has authority to negotiate and sign contracts and other agreements; (3) whether the respondent has autonomy from the government in making decisions regarding the selection of management; and (4) whether the respondent retains the proceeds of its export sales and makes independent decisions regarding disposition of profits or financing of losses. *See Silicon Carbide*, 59 FR at 22586–87; *see also Notice of Final Determination of Sales at Less Than Fair Value: Furfuryl Alcohol From the People's Republic of China*, 60 FR 22544, 22545 (May 8, 1995).

With regard to *de facto* control, Kangtai reported that: (1) it independently set prices for sales to the United States through negotiations with customers and these prices are not subject to review by any government organization; (2) it did not coordinate with other exporters or producers to set the price or to determine to which market the companies will sell subject merchandise; (3) the PRC Chamber of Commerce did not coordinate the export activities of Kangtai; (4) its sales person has the authority to contractually bind it to sell subject merchandise; (5) its general manager is selected by the shareholder meeting; (6) there is no restriction on its use of export revenues; and (7) its shareholders ultimately determine the disposition of respective profits. Furthermore, our analysis of Kangtai's questionnaire responses reveals no information indicating government control of its export activities. Therefore, based on the information on the record, we preliminarily determine that there is an absence of *de facto* government control with respect to Kangtai's export functions and that Kangtai has met the criteria for the application of a separate rate. The Department has determined that an analysis of *de facto* control is critical in determining whether respondents are, in fact, subject to a degree of government control which would preclude the Department from assigning separate rates. *See* Kangtai's AQR at pages A–7 through A–9.

The evidence placed on the record of this administrative review by Kangtai demonstrates an absence of *de facto* government control with respect to Kangtai's exports of the merchandise under review, in accordance with the criteria identified in *Sparklers* and *Silicon Carbide*.

Date of Sale

19 CFR 351.401(i) states that:

> In identifying the date of sale of the subject merchandise or foreign like product, the Secretary normally will use the date of invoice, as recorded in the exporter or producer's records kept in the normal course of business. However, the Secretary may use a date other than the date of invoice if the Secretary is satisfied that a different date better reflects the date on which the exporter or producer establishes the material terms of sale.

Kangtai reported the invoice date as the date of sale because it claims that all sales terms are fixed, *i.e.*, the exact quantity of the container load and the exact value calculated, when the invoice is issued. We have preliminarily determined that the invoice date is the most appropriate date to use as Kangtai's date of sale in accordance with our long–standing practice of determining the date of sale as the date on which the final terms of sale are established.[12]

[11] On August 17, 2006, the Pension Protection Act of 2006, Public Law 109-280, (''H.R. 4''), was signed into law. Section 1632 of H.R. 4 temporarily suspends the authority of the Department to instruct CBP to collect a bond or other security in lieu of a cash deposit in new shipper reviews during the period April 1, 2006, through June 30, 2009. While this provision is temporary, it was lifted only for reviews initiated on or after July 1, 2009. Therefore, the posting of a bond or other security under section 751(a)(2)(B)(iii) of the Act in lieu of a cash deposit is not available in this case. Importers of chlorinated isocyanurates exported and produced by Kangtai must continue to post a cash deposit of estimated antidumping duties on each entry of subject merchandise at the PRC-wide rate of 285.63 percent.

[12] *Notice of Final Determination of Sales at Less Than Fair Value and Negative Final Determination of Critical Circumstances: Certain Frozen and Canned Warmwater Shrimp From Thailand*, 69 FR 76918 (December 23, 2004), and accompanying Issues and Decision Memorandum at Comment 10;

Continued

Fair Value Comparisons

To determine whether sales of chlorinated isos to the United States by Kangtai were made at less than NV, the Department compared export price (''EP'') to NV, as described in the ''Export Price'' and ''Normal Value'' sections of this notice, pursuant to section 771(35) of the Act.

Export Price

Kangtai sold the subject merchandise directly to unaffiliated purchasers in the United States prior to importation into the United States. Therefore, we have used EP in accordance with section 772(a) of the Act because the use of the constructed export price methodology is not otherwise indicated. We calculated EP based on the price, including the appropriate shipping terms, to the unaffiliated purchasers as reported by Kangtai.

To value truck freight, we used the freight rates published by <*www.infobanc.com*>, ''The Great Indian Bazaar, Gateway to Overseas Markets.'' The logistics section of the website contains inland freight truck rates between many large Indian cities. The truck freight rates are for the period August 2008 through September 2008. *See* Surrogate Value Memorandum.

The Department valued brokerage and handling using a simple average of the brokerage and handling costs that were reported in public submissions that were filed in three antidumping duty cases. Specifically, we averaged the public brokerage and handling expenses reported by Navneet Publications (India) Ltd. in the 2007–2008 administrative review of certain lined paper products from India, Essar Steel Limited in the 2006–2007 antidumping duty administrative review of hot–rolled carbon steel flat products from India, and Himalaya International Ltd. in the 2005–2006 administrative review of certain preserved mushrooms from India. The Department adjusted the average brokerage and handling rate for inflation. *See* Surrogate Value Memorandum.

Normal Value

Section 773(c)(1) of the Act provides that, in the case of an NME, the Department shall determine NV using an FOP methodology if the merchandise is exported from an NME and the information does not permit the calculation of NV using home–market prices, third–country prices, or constructed value under section 773(a) of the Act.

The Department will base NV on FOPs because the presence of government controls on various aspects of these economies renders price comparisons and the calculation of production costs invalid under our normal methodologies. Therefore, we calculated NV based on FOPs in accordance with sections 773(c)(3) and (4) of the Act and 19 CFR 351.408(c). The FOPs include: (1) hours of labor required; (2) quantities of raw materials employed; (3) amounts of energy and other utilities consumed; and (4) representative capital costs. We used the FOPs reported by respondent for materials, energy, labor, and packing.

In accordance with 19 CFR 351.408(c)(1), the Department will normally use publicly available information to value the FOPs, but when a producer sources an input from a market–economy country and pays for it in market–economy currency, the Department may value the factor using the actual price paid for the input.[13] Kangtai reported that it did not purchase any inputs from market economy suppliers for the production of the subject merchandise. See Kangtai's DQR at page 5.

With regard to the Indian import–based surrogate values, we have disregarded prices that we have reason to believe or suspect may be subsidized, such as those from Indonesia, South Korea, and Thailand. We have found in other proceedings that these countries maintain broadly available, non–industry-specific export subsidies and, therefore, it is reasonable to infer that all exports to all markets from these countries may be subsidized.[14] We are also guided by the statute's legislative history that explains that it is not necessary to conduct a formal investigation to ensure that such prices are not subsidized. *See* H.R. Rep. No. 100–576, at 590 (1988). Rather, the Department was instructed by Congress to base its decision on information that is available to it at the time it is making its determination. Therefore, we have not used prices from these countries in calculating the Indian import–based surrogate values.

Factor Valuations

In accordance with section 773(c) of the Act, we calculated NV based on the FOPs reported by Kangtai for the POR. To calculate NV, we multiplied the reported per–unit factor consumption quantities by publicly available Indian surrogate values. In selecting the surrogate values, we considered the quality, specificity, and contemporaneity of the data. As appropriate, we adjusted input prices by including freight costs to render them delivered prices. Specifically, we added to Indian import surrogate values a surrogate freight cost using the shorter of the reported distance from the domestic supplier to the factory or the distance from the nearest seaport to the factory. This adjustment is in accordance with the decision of the U.S. Court of Appeals for the Federal Circuit in *Sigma Corp. v. United States*, 117 F.3d 1401, 1408 (Fed. Cir. 1997). For a detailed description of all surrogate values used for Kangtai, see the Surrogate Value Memorandum.

Except as noted below, we valued raw material inputs using the weighted–average unit import values derived from the *Monthly Statistics of the Foreign Trade of India*, as published by the Directorate General of Commercial Intelligence and Statistics of the Ministry of Commerce and Industry, Government of India in the World Trade Atlas, available at <http://www.gtis.com/wta.htm> (''WTA''). Where we could not obtain publicly available information contemporaneous with the POR with which to value FOPs, we adjusted the surrogate values using, where appropriate, the Indian Wholesale Price Index as published in the *International Financial Statistics* of the International Monetary Fund. *See* Surrogate Value Memorandum. We further adjusted these prices to account for freight costs incurred between the supplier and respondent. We used the freight rates published by <*www.infobanc.com*>, ''The Great Indian Bazaar, Gateway to Overseas Markets,'' to value truck freight. See the Surrogate Value Memorandum. For a complete description of the factor values we used, see the Surrogate Value Memorandum.

We valued calcium chloride and sodium hydroxide using *Chemical Weekly*. For a detailed discussion of these selections, see the Surrogate Value Memorandum. We adjusted these values for taxes and to account for freight costs

and *Notice of Final Determination of Sales at Less Than Fair Value: Structural Steel Beams From Germany*, 67 FR 35497 (May 20, 2002), and accompanying Issues and Decision Memorandum at Comment 2.

[13] *See* 19 CFR 351.408(c)(1); *see also, Shakeproof Assembly Components Div. of Ill v. United States, 268 F.3d* 1376, 1382-1383 (Fed. Cir. 2001) (affirming the Department's use of market-based prices to value certain FOPs).

[14] *See e.g., Certain Activated Carbon From the People's Republic of China: Notice of Preliminary Results of the Antidumping Duty Administrative Review and Extension of Time Limits for the Final Results*, 74 FR 21317, 21327 (May 7, 2009) (unchanged in the final results); and *China National Machinery Import & Export Corporation v. United States*, 293 F. Supp. 2d 1334, 1338-1339 (CIT 2003), affirmed 104 Fed. Appx. 183 (Fed. Cir. 2004).

incurred between the supplier and the respondent.

To value electricity, we used price data for small, medium, and large industries, as published by the Central Electricity Authority of the Government of India in its publication entitled Electricity Tariff & Duty and Average Rates of Electricity Supply in India,'' dated July 2006. These electricity rates represent actual country–wide, publicly–available information on tax–exclusive electricity rates charged to industries in India. As the rates listed in this source became effective on a variety of different dates, we are not adjusting the average value for inflation. *See* Surrogate Value Memorandum.

To value water, we used the revised Maharashtra Industrial Development Corporation water rates available at <http://www.midcindia.com/water–supply> and adjusted for deflation. *See* Surrogate Value Memorandum.

To value coal, we used data obtained for categories B and C for coal reported in the 2007 Indian Bureau of Mines' Minerals Yearbook adjusted for inflation. *See* Surrogate Value Memorandum.

For labor, consistent with 19 CFR 351.408(c)(3), we used the PRC regression–based wage rate as reported on Import Administration's web site.[15] Because this regression–based wage rate does not separate the labor rates into different skill levels or types of labor, we have applied the same wage rate to all skill levels and types of labor reported by the respondent. *See* Surrogate Value Memorandum.

For packing materials, we used the per–kilogram values obtained from the WTA and made adjustments to account for freight costs incurred between the PRC supplier and Kangtai's plants. *See* Surrogate Value Memorandum.

None of the interested parties in this review provided financial statements for use in calculating a surrogate value for factory overhead, selling, general, and administrative expenses (''SG&A''), and profit for the preliminary results. Therefore, for factory overhead, SG&A, and profit values, we used information from Kanoria Chemicals and Industries Limited for the year ending March 31, 2007, which we obtained from the 2007–2008 administrative review of chlorinated isos and placed on the record of this review. From this information, we were able to determine factory overhead as a percentage of the total raw materials, labor and energy (''ML&E'') costs; SG&A as a percentage of ML&E plus overhead (*i.e.*, cost of manufacture); and the profit rate as a percentage of the cost of manufacture plus SG&A. *See* Surrogate Value Memorandum for a full discussion of the calculation of these ratios.

Currency Conversion

We made currency conversions into U.S. dollars, in accordance with section 773A(a) of the Act, based on the exchange rates in effect on the dates of the U.S. sales, as certified by the Federal Reserve Bank.

Preliminary Results

We preliminarily determine that the following weighted–average dumping margin exists:

Exporter	Producer	Weighted–Average Margin
Juancheng Kangtai Chemical Company, Ltd., or Company A	Juancheng Kangtai Chemical Company, Ltd., or Company A	0.00%*

**de minimis*

Disclosure

We will disclose the calculations used in our analysis to parties to this proceeding within five days of the publication date of this notice. *See* 19 CFR 351.224(b). Interested parties are invited to comment on the preliminary results and may submit case briefs and/or written comments within 30 days of the date of publication of this notice. *See* 19 CFR 351.309(c)(ii). Rebuttal briefs and rebuttals to written comments, limited to issues raised in such briefs or comments, may be filed no later than five days after the time limit for filing the case briefs. *See* 19 CFR 351.309(d). The Department requests that parties submitting written comments provide an executive summary and a table of authorities as well as an additional copy of those comments electronically.

Any interested party may request a hearing within 30 days of publication of this notice. *See* 19 CFR 351.310(c). Hearing requests should contain the following information: (1) the party's name, address, and telephone number; (2) the number of participants; and (3) a list of the issues to be discussed. Oral presentations will be limited to issues raised in the briefs. If a request for a hearing is made, parties will be notified of the time and date for the hearing to be held at the U.S. Department of Commerce, 14th Street and Constitution Avenue, NW, Washington, DC 20230. See 19 CFR 351.310(d).

The Department intends to issue the final results of this NSR, which will include the results of its analysis of issues raised in any such comments, within 90 days of publication of these preliminary results, in accordance with 19 CFR 351.214(i)(1), unless the time limit is extended. See 19 CFR 351.214(i)(1).

Assessment Rates

Upon issuance of the final results, the Department will determine, and CBP shall assess, antidumping duties on all appropriate entries. The Department intends to issue assessment instructions to CBP 15 days after the publication date of the final results of this review. In accordance with 19 CFR 351.212(b)(1), we calculated exporter/producer/importer (or customer)-specific assessment rates for the merchandise subject to this review. Where the respondent has reported reliable entered values, we calculated importer (or customer)-specific *ad valorem* rates by aggregating the dumping margins calculated for all U.S. sales to each importer (or customer) and dividing this amount by the total entered value of the sales to each importer (or customer). *See* 19 CFR 351.212(b)(1).

Where we do not have entered values for all U.S. sales, we calculated a per–unit assessment rate by aggregating the antidumping duties due for all U.S. sales to each importer (or customer) and dividing this amount by the total quantity sold to that importer (or customer). *See* 19 CFR 351.212(b)(1). To determine whether the duty assessment rates are *de minimis*, in accordance with the requirement set forth in 19 CFR 351.106(c)(2), we calculated importer

[15] *See* Expected Wages of Selected NME Countries (revised January 2007) (available at http://ia.ita.doc.gov/wages). The source of these wage rate data on the Import Administration's web site is the *Yearbook of Labour Statistics 2005*, ILO, (Geneva: 2005), Chapter 5B: Wages in Manufacturing. The years of the reported wage rates range from 2003 to 2004.

(or customer)-specific *ad valorem* ratios based on the estimated entered value.

Where an importer (or customer)-specific *ad valorem* rate is greater than *de minimis*, we will apply the assessment rate to the entered value of the importers'/customers' entries during the POR. *See* 19 CFR 351.212(b)(1). Where an importer (or customer)-specific *ad valorem* rate is zero or *de minimis*, we will instruct CBP to liquidate appropriate entries without regard to antidumping duties. *See* 19 CFR 351.106(c)(2).

Cash Deposit Requirements

Further, the following cash deposit requirements will be effective upon publication of the final results of this NSR for all shipments of the subject merchandise entered, or withdrawn from warehouse, for consumption on or after the publication date, as provided for by section 751(a)(2)(C) of the Act: (1) for the exporter/producer chain identified above, the cash deposit rate will be the chain–specific rate established in the final results of review (except, if the rate is zero or *de minimis*, a zero cash deposit will be required); (2) for previously investigated or reviewed PRC and non–PRC exporters not listed above that have separate rates, the cash deposit rate will continue to be the exporter–specific rate published for the most recent period; (3) for all PRC exporters of subject merchandise that have not been found to be entitled to a separate rate, the cash deposit rate will be the PRC–wide rate of 285.63 percent; and (4) for all non–PRC exporters of subject merchandise which have not received their own rate, the cash deposit rate will be the rate applicable to the PRC exporters that supplied that non–PRC exporter. These deposit requirements, when imposed, shall remain in effect until further notice.

Notification to Importers

This notice also serves as a preliminary reminder to importers of their responsibility under 19 CFR 351.402(f)(2) to file a certificate regarding the reimbursement of antidumping duties prior to liquidation of the relevant entries during this review period. Failure to comply with this requirement could result in the Secretary's presumption that reimbursement of antidumping duties occurred and the subsequent assessment of double antidumping duties.

This determination is issued and published in accordance with sections 751(a)(1) and 777(i)(1) of the Act.

Dated: July 20, 2009.

Ronald K. Lorentzen,

Acting Assistant Secretary for Import Administration.

[FR Doc. E9–17869 Filed 7–24–09; 8:45 am]

BILLING CODE 3510–DS–S

DEPARTMENT OF COMMERCE

International Trade Administration

(C–570–942)

Certain Kitchen Shelving and Racks from the People's Republic of China: Final Affirmative Countervailing Duty Determination

AGENCY: Import Administration, International Trade Administration, Department of Commerce.

SUMMARY: The Department of Commerce (the ''Department'') has determined that countervailable subsidies are being provided to producers and exporters of kitchen shelving and racks from the People's Republic of China (''PRC''). For information on the estimated countervailing duty rates, please see the ''Suspension of Liquidation'' section, below.

EFFECTIVE DATE: July 27, 2009.

FOR FURTHER INFORMATION CONTACT: Shane Subler or Scott Holland, AD/CVD Operations, Office 1, Import Administration, International Trade Administration, U.S. Department of Commerce, 14th Street and Constitution Avenue, NW, Washington, DC 20230; telephone: (202) 482–0189 or (202) 482–1279, respectively.

SUPPLEMENTARY INFORMATION:

Petitioner

Petitioners in this investigation are Nashville Wire Products., Inc., SSW Holding Company, Inc., United Steel, Paper and Forestry, Rubber, Manufacturing, Energy, Allied–Industrial and Service Workers International Union, and the International Association of Machinists and Aerospace Workers, District Lodge 6 (Clinton, IA) (collectively, ''Petitioners'').

Period of Investigation

The period for which we are measuring subsidies, or period of investigation, is January 1, 2007, through December 31, 2007.

Case History

The following events have occurred since the announcement of the preliminary determination published in the **Federal Register** on January 7, 2009. *See Certain Kitchen Appliance Shelving and Racks From the People's Republic of China: Preliminary Affirmative Countervailing Duty Determination and Alignment of Final Countervailing Duty Determination With Final Antidumping Duty Determination*, 74 FR 683 (January 7, 2009) (''*Preliminary Determination*'').

The Department issued the third and fourth supplemental questionnaires to respondent Guangdong Wire King Housewares and Hardware Co., Ltd. (''Wire King'') on December 29, 2008 and March 17, 2009, respectively. We received responses from Wire King to the third supplemental questionnaire on January 22, 2009, and to the fourth supplemental questionnaire on April 3, 2009. The Department also issued second, third, and fourth supplemental questionnaires to the Government of the PRC (''GOC'') on February 11, 2009, March 19, 2009, and March 25, 2009, respectively. We received responses from GOC to the second supplemental questionnaire on March 11, 2009, and to the third and fourth supplemental questionnaires on April 9, 2009.

The GOC, Wire King, Petitioners, and interested parties also submitted factual information, comments, and arguments at numerous instances prior to the final determination based on various deadlines for submissions of factual information and/or arguments established by the Department subsequent to the *Preliminary Determination*.

From May 5, 2009 to May 28, 2009, we conducted verification of the questionnaire responses submitted by GOC and Wire King. *See* Memorandum from Shane Subler and Scott Holland, International Trade Compliance Analysts, to Susan H. Kuhbach, Office Director, AD/CVD Operations, Office 1, entitled ''Verification Report: Guangdong Wireking Housewares and Hardware Co., Ltd.'' (June 19, 2009); and Memorandum from The Verification Team to Susan H. Kuhbach, Office Director, AD/CVD Operations, Office 1, entitled ''Verification Report of the Foshan Municipal Government, Shunde District Government and the Guangdong Provincial Government of the People's Republic of China'' (June 19, 2009) (''Verification Report'').

On May 8, 2009, we issued our post–preliminary analysis regarding the provision of electricity for less than adequate remuneration (''LTAR''). We addressed our preliminary findings in a May 8, 2009, memorandum to Ronald K. Lorentzen, Acting Assistant Secretary for Import Administration, entitled ''Preliminary Findings Regarding Electricity Pricing in China: Kitchen Appliance Shelving and Racks from the

People's Republic of China,'' which is on file in the Central Records Unit.

We received case briefs from the GOC, Wire King, and Petitioners on June 26, 2009. The same parties submitted rebuttal briefs on July 1, 2009. A public hearing was not requested.

Scope of the Investigation

The scope of this investigation consists of shelving and racks for refrigerators, freezers, combined refrigerator–freezers, other refrigerating or freezing equipment, cooking stoves, ranges, and ovens (''certain kitchen appliance shelving and racks'' or ''the subject merchandise''). Certain kitchen appliance shelving and racks are defined as shelving, baskets, racks (with or without extension slides, which are carbon or stainless steel hardware devices that are connected to shelving, baskets, or racks to enable sliding), side racks (which are welded wire support structures for oven racks that attach to the interior walls of an oven cavity that does not include support ribs as a design feature), and subframes (which are welded wire support structures that interface with formed support ribs inside an oven cavity to support oven rack assemblies utilizing extension slides) with the following dimensions:

- Shelving and racks with dimensions ranging from 3 inches by 5 inches by 0.10 inch to 28 inches by 34 inches by 6 inches; or
- Baskets with dimensions ranging from 2 inches by 4 inches by 3 inches to 28 inches by 34 inches by 16 inches; or
- Side racks from 6 inches by 8 inches by 0.10 inch to 16 inches by 30 inches by 4 inches; or
- Subframes from 6 inches by 10 inches by 0.10 inch to 28 inches by 34 inches by 6 inches.

The subject merchandise is comprised of carbon or stainless steel wire ranging in thickness from 0.050 inch to 0.500 inch and may include sheet metal of either carbon or stainless steel ranging in thickness from 0.020 inch to 0.20 inch. The subject merchandise may be coated or uncoated and may be formed and/or welded. Excluded from the scope of this investigation is shelving in which the support surface is glass.

The merchandise subject to this investigation is currently classifiable in the Harmonized Tariff Schedule of the United States (''HTSUS'') statistical reporting numbers 8418.99.80.50, 7321.90.50.00, 7321.90.60.90, 8418.99.80.60, and 8516.90.80.00. Although the HTSUS subheadings are provided for convenience and customs purposes, the written description of the scope of this investigation is dispositive.

Scope Comments

Since the *Preliminary Determination*, the Department added an additional HTSUS number to the scope of the investigation. On January 29, 2009, we added other refrigerator parts, HTSUS number 8418.99.80.60 to the scope of the investigation. See Memorandum to the File, dated January 29, 2009.

Injury Test

Because the PRC is a ''Subsidies Agreement Country'' within the meaning of section 701(b) of the Tariff Act of 1930, as amended (the ''Act''), section 701(a)(2) of the Act applies to this investigation. Accordingly, the ITC must determine whether imports of the subject merchandise from the PRC materially injure, or threaten material injury to a U.S. industry. On September 24, 2008, the U.S. International Trade Commission (''ITC'') issued its affirmative preliminary determination that there is a reasonable indication that an industry in the United States is materially injured by reason of allegedly subsidized imports of certain kitchen appliance shelving and racks from the PRC. *See Certain Kitchen Appliance Shelving and Racks From China,* 73 FR 55132 (September 24, 2008); and *Certain Kitchen Appliance Shelving and Racks from China (Preliminary)*, USITC Pub. 4035, Inv. Nos. 701–TA–458 and 731–TA–1154 (Sept. 2008).

Analysis of Comments Received

All issues raised in the case and rebuttal briefs by parties to this investigation are addressed in the Memorandum from John M. Andersen, Acting Deputy Assistant Secretary for Antidumping and Countervailing Duty Operations, to Ronald K. Lorentzen, Acting Assistant Secretary for Import Administration, entitled *''Issues and Decision Memorandum for the Final Determination in the Countervailing Duty Investigation of Certain Kitchen Appliance Shelving and Racks from the People's Republic of China''* (July 20, 2009) (hereafter ''Decision Memorandum''), which is hereby adopted by this notice. Attached to this notice as an Appendix is a list of the issues that parties have raised and to which we have responded in the Decision Memorandum. Parties can find a complete discussion of all issues raised in this investigation and the corresponding recommendations in this public memorandum, which is on file in the CRU. In addition, a complete version of the Decision Memorandum can be accessed directly on the Internet at http://ia.ita.doc.gov/frn/. The paper copy and electronic version of the Decision Memorandum are identical in content.

Use of Adverse Facts Available

For purposes of this final determination, we have continued to rely on facts available and have continued to use adverse inferences in accordance with sections 776(a) and (b) of the Act to determine the countervailable subsidy rates for Asber Enterprise Co. (''Asber''), which is one of the two companies selected to respond to our questionnaires. A full discussion of our decision to apply adverse facts available is presented in the Decision Memorandum in the section ''Use of Facts Otherwise Available and Adverse Facts Available.''

In a departure from the *Preliminary Determination*, the Department now finds that the use of ''facts otherwise available'' is warranted with regard to provision of electricity for LTAR because the Department was not able to verify, *inter alia*, the GOC's questionnaire responses regarding the process for setting electricity rates and the relation of those rates to the electricity generation costs. *See* Decision Memorandum, at ''Use of Facts Otherwise Available and Adverse Facts Available''. Moreover, the GOC failed to cooperate to the best of its ability because it failed to provide requested documents, provided inconsistent responses regarding the availability of the documents, and because it did not disclose in its questionnaire responses that the electricity price adjustment process started from a National Development and Reform Commission–determined national price adjustment. In misrepresenting this information, the GOC did not provide the Department with full and complete answers. *See* Verification Report at 2–9. Accordingly, we find that an adverse inference is warranted, pursuant to section 776(b) of the Act. Specifically, we find that the GOC's provision of electricity constitutes a financial contribution within the meaning of section 771(5)(D) of the Act and is specific within the meaning of section 771(5A)(D)(iv) of the Act. We have also relied on an adverse inference in selecting a benchmark for determining the existence and amount of the benefit.

Suspension of Liquidation

In accordance with section 705(c)(1)(B)(i)(I) of the Act, we have calculated individual rates for Wire King and Asber. Section 705(c)(5)(A)(i) of the Act states that for companies not investigated, we will determine an ''all others'' rate equal to the weighted–average countervailable subsidy rates

established for exporters and producers individually investigated, excluding any zero and *de minimis* countervailable subsidy rates, and any rates determined entirely under section 776 of the Act.

Exporter/Manufacturer	Net Subsidy Rate
Guangdong Wire King Co., Ltd. (formerly known as Foshan Shunde Wireking Housewares & Hardware)	13.30
Asber Enterprises Co., Ltd. (China)	170.82
Changzhou Yixiong Metal Products Co., Ltd.	149.91
Foshan Winleader Metal Products Co., Ltd.	149.91
Kingsun Enterprises Group Co, Ltd.	149.91
Yuyao Hanjun Metal Work Co./Yuyao Hanjun Metal Products Co., Ltd.	149.91
Zhongshan Iwatani Co., Ltd.	149.91
All–Others	13.30

Also, in accordance with section 703(d) of the Act, we instructed U.S. Customs and Border Protection to discontinue the suspension of liquidation for countervailing duty purposes for subject merchandise entered on or after May 7, 2009, but to continue the suspension of liquidation of entries made from January 7, 2009, through May 6, 2009.

We will issue a countervailing duty order if the ITC issues a final affirmative injury determination, and will require a cash deposit of estimated countervailing duties for such entries of merchandise in the amounts indicated above. If the ITC determines that material injury, or threat of material injury, does not exist, this proceeding will be terminated and all estimated duties deposited or securities posted as a result of the suspension of liquidation will be refunded or canceled.

ITC Notification

In accordance with section 705(d) of the Act, we will notify the ITC of our determination. In addition, we are making available to the ITC all non–privileged and non–proprietary information related to this investigation. We will allow the ITC access to all privileged and business proprietary information in our files, provided the ITC confirms that it will not disclose such information, either publicly or under an APO, without the written consent of the Assistant Secretary for Import Administration.

Return or Destruction of Proprietary Information

In the event that the ITC issues a final negative injury determination, this notice will serve as the only reminder to parties subject to an administrative protective order (''APO'') of their responsibility concerning the destruction of proprietary information disclosed under APO in accordance with 19 CFR 351.305(a)(3). Timely written notification of the return/destruction of APO materials or conversion to judicial protective order is hereby requested. Failure to comply with the regulations and terms of an APO is a violation which is subject to sanction.

This determination is published pursuant to sections 705(d) and 777(i) of the Act.

Dated: July 20, 2009.

Ronald K. Lorentzen,

Acting Assistant Secretary for Import Administration.

APPENDIX

List of Comments and Issues in the Decision Memorandum

General Issues

Comment 1 Application of CVD Law to a Country the Department treats as an NME in a Parallel AD Investigation

Comment 2 Double Counting/Overlapping Remedies

Comment 3 Proposed Cutoff Date for Identifying Subsidies

Program Specific Issues

Comment 4 Certain Wire Rod Suppliers as Authorities

Comment 5 Wire Rod Provided by Private Suppliers

Comment 6 Wire Rod Provided by Trading Companies

Comment 7 Application of Adverse Facts Available for Wire Rod Production Data

Comment 8 Benchmarks for Wire Rod

Comment 9 Adding the Cost of Insurance to the Wire Rod Benchmark Value

Comment 10 Tying the Wire Rod Subsidy

Comment 11 Provision of Electricity for LTAR

Comment 12 FIE Tax Programs - Whether FIE Tax Programs are Specific

[FR Doc. E9–17867 Filed 7–24–09; 8:45 am]

BILLING CODE 3510–DS–S

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

RIN: 0648–XQ46

New England Fishery Management Council; Public Meeting

AGENCY: National Marine Fisheries Service (NMFS), National Oceanic and Atmospheric Administration (NOAA), Commerce.

ACTION: Notice of a public meeting.

SUMMARY: The New England Fishery Management Council's (Council) Herring Oversight Committee will meet to consider actions affecting New England fisheries in the exclusive economic zone (EEZ).

DATES: The meeting will be held on Monday, August 24, 2009, at 9:30 a.m.

ADDRESSES: The meeting will be held at the Holiday Inn By the Bay, 88 Spring Street, Portland, ME 04101; telephone: (207) 775–2311; fax: (207) 772–4017.

Council address: New England Fishery Management Council, 50 Water Street, Mill 2, Newburyport, MA 01950.

FOR FURTHER INFORMATION CONTACT: Paul J. Howard, Executive Director, New England Fishery Management Council; telephone: (978) 465–0492.

SUPPLEMENTARY INFORMATION: The items of discussion in the committee's agenda are as follows:

Agenda

1. Continue development of catch monitoring alternatives for inclusion in Amendment 5 to the Atlantic Herring Fishery Management Plan (FMP), which may include but are not limited to: specific monitoring and reporting requirements for herring vessels and processors, observer coverage and at-sea monitoring, shoreside/dockside monitoring and sampling, electronic reporting, video-based monitoring, maximized retention, catch monitoring and control plans, and vessel monitoring system (VMS) requirements; develop Herring Committee recommendations.

2. Address other issues related to Amendment 5, as necessary.

Although non-emergency issues not contained in this agenda may come before this group for discussion, those issues may not be the subject of formal action during this meeting. Action will be restricted to those issues specifically identified in this notice and any issues arising after publication of this notice that require emergency action under section 305(c) of the Magnuson-Stevens Fishery Conservation and Management

Act, provided the public has been notified of the Council's intent to take final action to address the emergency.

Special Accommodations

This meeting is physically accessible to people with disabilities. Requests for sign language interpretation or other auxiliary aids should be directed to Paul J. Howard (see **ADDRESSES**) at least 5 days prior to the meeting date.

Authority: 16 U.S.C. 1801 *et seq.*

Dated: July 22, 2009.

Tracey L. Thompson,

Acting Director, Office of Sustainable Fisheries National Marine Fisheries Service.

[FR Doc. E9–17810 Filed 7–24–09; 8:45 am]

BILLING CODE 3510–22–S

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

RIN 0648–XQ48

Marine Mammals; File No. 14097

AGENCY: National Marine Fisheries Service (NMFS), National Oceanic and Atmospheric Administration (NOAA), Commerce.

ACTION: Notice; receipt of application.

SUMMARY: Notice is hereby given that National Marine Fisheries Service, Southwest Fisheries Science Center (SWFSC) (Jeremy Rusin, Principal Investigator), Protected Resources Division, 3333 N. Torrey Pines Ct., La Jolla, CA 92037, has applied in due form for a permit to conduct scientific research on five pinniped species, 57 cetacean species, and five sea turtle species in the Pacific, Southern, Indian, and Arctic Oceans.

DATES: Written, telefaxed, or e-mail comments must be received on or before August 26, 2009.

ADDRESSES: The application and related documents are available for review by selecting ''Records Open for Public Comment'' from the Features box on the Applications and Permits for Protected Species (APPS) home page, *https://apps.nmfs.noaa.gov*, and then selecting File No. 14097 from the list of available applications.

These documents are also available upon written request or by appointment in the following office(s): See **SUPPLEMENTARY INFORMATION.**

Written comments on this application should be submitted to the Chief, Permits, Conservation and Education Division, at the address listed below. Comments may also be submitted by facsimile to (301)713–0376, or by email to *NMFS.Pr1Comments@noaa.gov*. Please include File No. 14097 in the subject line of the email comment.

Those individuals requesting a public hearing should submit a written request to the Chief, Permits, Conservation and Education Division at the address listed below. The request should set forth the specific reasons why a hearing on this application would be appropriate.

FOR FURTHER INFORMATION CONTACT: Kristy Beard or Amy Hapeman, (301)713–2289.

SUPPLEMENTARY INFORMATION: The subject permit is requested under the authority of the Marine Mammal Protection Act of 1972, as amended (MMPA; 16 U.S.C. 1361 *et seq.*), the regulations governing the taking and importing of marine mammals (50 CFR part 216), the Endangered Species Act of 1973, as amended (ESA; 16 U.S.C. 1531 *et seq.*), and the regulations governing the taking, importing, and exporting of endangered and threatened species (50 CFR 222–226).

The SWFSC requests a five-year permit to take marine mammals and sea turtles for scientific research purposes in the Pacific, Southern, Indian, and Arctic Oceans. Five species of pinniped, fifty-seven species of cetacean, and five species of sea turtles will be targeted for study. The application consists of three projects. The purposes of Project I (Pinnipeds) are to conduct population assessments for northern elephant seals (*Mirounga angustirostris*), California sea lions (*Zalophus californianus*), Steller sea lions (*Eumetopias jubatus*), and harbor seals (*Phoca vitulina*) via aerial photography, ground or vessel surveys, and photogrammetry to determine abundance, distribution patterns, length frequencies, and breeding densities. Scats and spewings will be collected from California sea lions to determine their diet. This research is part of an ongoing program to assess the status of pinniped species and identify fishery-marine mammal conflicts. The purpose of Project II (Cetaceans) is to determine the abundance, distribution, movement patterns, and stock structure of cetaceans in U.S. territorial and international waters. These studies will be conducted through vessel surveys, aerial surveys, small plane photogrammetry, photo-identification (from vessels and small boats), biological sampling, radio tagging, and satellite tagging. Cetacean abundance data will be used to set limits of allowable human caused mortality under the MMPA and to monitor trends in abundance through time. The purpose of Project III (Sea Turtles) is to determine the abundance, distribution, movement patterns, stock structure, and diet of sea turtles in U.S. territorial and international waters. Sea turtles will be opportunistically captured during Project II for collection of blood samples, stomach contents, and tissue biopsy and to attach satellite tags. The SWFSC also requests the salvage and import/export of cetacean, pinniped, and sea turtle parts, specimens, and biological samples collected during these projects.

Concurrent with the publication of this notice in the **Federal Register**, NMFS is forwarding copies of this application to the Marine Mammal Commission and its Committee of Scientific Advisors.

Documents may be reviewed in the following locations:

Permits, Conservation and Education Division, Office of Protected Resources, NMFS, 1315 East-West Highway, Room 13705, Silver Spring, MD 20910; phone (301)713–2289; fax (301)713–0376;

Northwest Region, NMFS, 7600 Sand Point Way NE, BIN C15700, Bldg. 1, Seattle, WA 98115–0700; phone (206)526–6150; fax (206)526–6426;

Alaska Region, NMFS, P.O. Box 21668, Juneau, AK 99802–1668; phone (907)586–7221; fax (907)586–7249;

Southwest Region, NMFS, 501 West Ocean Blvd., Suite 4200, Long Beach, CA 90802–4213; phone (562)980–4001; fax (562)980–4018; and

Pacific Islands Region, NMFS, 1601 Kapiolani Blvd., Rm 1110, Honolulu, HI 96814–4700; phone (808)944–2200; fax (808)973–2941.

Dated: July 21, 2009.

Tammy C. Adams,

Acting Chief, Permits, Conservation and Education Division, Office of Protected Resources, National Marine Fisheries Service.

[FR Doc. E9–17840 Filed 7–24–09; 8:45 am]

BILLING CODE 3510–22–S

DEPARTMENT OF COMMERCE

Economic Development Administration

[Docket No.: 0907091111–91111–01]

Solicitation of Applications for the National Technical Assistance, Training, Research and Evaluation Program: Economic Development District Partnership Planning Program and CEDS Research Project

AGENCY: Economic Development Administration, Department of Commerce.

ACTION: Notice and request for applications.

SUMMARY: The Economic Development Administration (EDA) is soliciting

applications for FY 2009 National Technical Assistance, Training, Research and Evaluation (NTA) Program funding. Through this notice, EDA solicits applications to fund a research project to assess the effectiveness of EDA's Economic Development District (EDD) Partnership Planning Program and the quality of Comprehensive Economic Development Strategies (CEDS). EDA's mission is to lead the federal economic development agenda by promoting innovation and competitiveness, preparing American regions for growth and success in the worldwide economy. Through its NTA Program, EDA works towards fulfilling its mission by funding research and technical assistance projects to promote competitiveness and innovation in rural and urban regions throughout the United States and its territories. By working in conjunction with its research partners, EDA will help States, local governments, and community-based organizations to achieve their highest economic potential.

DATES: The closing date and time for receipt of applications for funding under the FY 2009 NTA Program competition is September 8, 2009 at 5 p.m. Eastern Time.

Application Submission Requirements: Applicants are advised to read carefully the instructions contained in section IV. of the complete federal funding opportunity (FFO) announcement for this request for applications. For a copy of the FFO announcement, please see the Web sites listed below under ''Electronic Access.''

Applications may be submitted in two formats: (i) Electronically in accordance with the procedures provided on *http://www.grants.gov* or submitted via e-mail to the address provided below in ''Electronic Submissions;'' or (ii) in paper format at the addresses provided below. EDA will not accept facsimile transmissions of applications. The content of the application is the same for paper submissions as it is for electronic submissions.

Applicants applying electronically through *http://www.grants.gov* or via e-mail may access the application package by following the instructions provided on *http://www.grants.gov.* You may obtain paper application packages by contacting the designated point of contact listed below under **FOR FURTHER INFORMATION CONTACT**.

Electronic Submissions: Applicants have two options for submitting electronically: through *http://www.grants.gov* or via e-mail. EDA strongly encourages that applicants not wait until the application closing date to begin the application process through *http://www.grants.gov.* Applicants also may e-mail completed application packages to Hillary Sherman at *HSherman@eda.doc.gov.* The preferred file format for electronic attachments (e.g., the Project Narrative and attachments to Form ED–900) is portable document format (PDF); however, EDA will accept electronic files in Microsoft Word, WordPerfect, or Excel formats.

For additional information regarding electronic submissions, please access the following link for assistance in navigating www.grants.gov and for a list of useful resources: *http://www.grants.gov/applicants/applicant_help.jsp.* If you do not find an answer to your question under *Frequently Asked Questions,* try consulting the *Applicant's User Guide.* If you still cannot find an answer to your question, contact *http://www.grants.gov* via e-mail at *support@grants.gov* or telephone at 1–800–518–4726. The hours of operation for *http://www.grants.gov* are Monday–Friday, 7 a.m. to 9 p.m. Eastern Time (except for federal holidays).

Paper Submissions: Paper (hardcopy) applications submitted under the NTA Program may be hand-delivered or mailed to: FY 2009 Economic Development Research Project Competition, Hillary Sherman, Program Analyst, Economic Development Administration, U.S. Department of Commerce, 1401 Constitution Avenue, NW., Room 7009, Washington, DC 20230.

Applicants are advised that, due to mail security measures, EDA's receipt of mail sent via the United States Postal Service may be substantially delayed or suspended in delivery. Applicants may wish to use a guaranteed overnight delivery service.

FOR FURTHER INFORMATION CONTACT: For additional information on the NTA Program or to obtain paper application packages for this notice, please contact Hillary Sherman, Program Analyst, via e-mail at *HSherman@eda.doc.gov* (preferred) or by telephone at (202) 482–3357.

Additional information about EDA and its NTA Program may be obtained from EDA's Internet Web site at *http://www.eda.gov.* The complete FFO announcement for this request for applications is available at *http://www.grants.gov* and at *http://www.eda.gov.*

SUPPLEMENTARY INFORMATION:

Background Information: EDA is soliciting applications for an economic development research project to evaluate the effectiveness of EDA's EDD Partnership Planning Program and to assess the effectiveness of CEDS documents. The proposed project consists of two phases: Phase I—EDD Effectiveness Evaluation and Phase II—CEDS Quality Assessment. EDA anticipates that evaluating the EDDs and CEDS and identifying best practices for both will enhance the effectiveness of the agency's Partnership Planning Program and the ability of Program recipients to produce positive economic outcomes.

About EDDs. EDA provides Partnership Planning grants to over 370 EDDs to enable each to manage and coordinate the development and implementation of a CEDS to address the unique needs of an EDD's region. In addition, EDDs organize and assist with the implementation of economic development activities within their regions. EDDs work in a wide variety of environments that may be influenced by a number of factors, including population density (such as urban, suburban, metro-rural, and non metro-rural) and available human and financial resources.

About CEDS. Each CEDS results from a local or regional comprehensive strategic planning process and is designed to serve as guide for local practitioners seeking to leverage their region's assets, create thriving clusters of innovation, and address potential threats to economic stability and growth. In short, the CEDS serves as a regional economic development ''cookbook.'' It describes regional assets, assesses opportunities, and addresses regional challenges over a five-year horizon.

EDA recognizes that exogenous factors such as available human, natural, and fiscal resources, may impact economic outcomes regardless of EDD performance or the quality of a CEDS. However, the agency continues to find that, all else equal, improved EDD performance and CEDS quality increase the probability of improved economic development outcomes. The recipient of the award will be expected to undertake and complete both phases. EDA expects methodologically rigorous applications capable of producing peer-review quality research that advances the understanding and skills of economic development practitioners, while providing practitioner-accessible tools. Additionally, the outcomes from this research should build upon the findings and work products from previous EDA research, including the work on industry and occupational clusters conducted by Purdue University and the Indiana Business Research Center

(available at *http://www.statsamerica.org/innovation/*) and work on regional strategic planning conducted by Western Carolina University (available at *http://knowyourregion.wcu.edu/*).

During Phase I: EDD Effectiveness Evaluation, the recipient will (i) Determine and report on the characteristics and components of effective EDDs; (ii) develop and test an EDD Evaluation Tool that will assess these characteristics and components; and (iii) report to EDA on recommended methods to improve EDD performance. During Phase II: CEDS Quality Assessment, the recipient will (i) assess and report on the effectiveness of the CEDS document; (ii) develop and test a CEDS Assessment Tool for CEDS documents; and (iii) report to EDA on recommended methods to improve CEDS guidance and requirements. At the completion of both phases, EDA anticipates that the recipient will provide training to local planning organizations, EDDs, and EDA staff. Please see the FFO announcement for this request for applications for more detailed information on the project phases and the required tasks under each.

Any information disseminated to the public under this request for applications is subject to the Information Quality Act (Pub. L. 106–554). Applicants are required to comply with the Information Quality Guidelines issued by EDA pursuant to the Information Quality Act, which are designed to ensure and maximize the quality, objectivity, utility and integrity of information disseminated by EDA. These guidelines are available on EDA's Web site at *http://www.eda.gov.*

Electronic Access: The complete FFO announcement for the FY 2009 Economic Development District Partnership Planning Program and CEDS Research Project competition is available at *http://www.grants.gov* and at *http://www.eda.gov/InvestmentsGrants/FFON.xml.*

Funding Availability: EDA may use funds appropriated under the FY 2009 Omnibus Appropriations Act (Pub. L. 111–8, 123 Stat. 524 (2009)) to make awards under the NTA Program. Approximately $1,000,000 is available, and shall remain available until expended, for funding awards under the NTA Program in FY 2009, including $460,000 in FY 2009 appropriations for economic development research.

Statutory Authority: The authority for the NTA Program is the Public Works and Economic Development Act of 1965, as amended (42 U.S.C. 3121 *et seq.*) (PWEDA). The specific authority for the Economic Development Research Projects Program is section 207 of PWEDA (42 U.S.C. 3147), which authorizes EDA to make grants for training, research, and technical assistance. EDA's regulations at 13 CFR parts 300–302 and subpart A of 13 CFR part 306 set forth the general and specific regulatory requirements applicable to the NTA Program.

The regulations and PWEDA are accessible on EDA's Internet Web site at *http://www.eda.gov/InvestmentsGrants/Lawsreg.xml.*

Catalog of Federal Domestic Assistance (CFDA) Numbers: 11.303, Economic Development—Technical Assistance; 11.312, Economic Development—Research and Evaluation.

Applicant Eligibility: Pursuant to PWEDA, eligible applicants for and recipients of EDA investment assistance include a District Organization; an Indian Tribe or a consortium of Indian Tribes; a State; a city or other political subdivision of a State, including a special purpose unit of a State or local government engaged in economic or infrastructure development activities, or a consortium of political subdivisions; an institution of higher education or a consortium of institutions of higher education; and a public or private non-profit organization or association.For-profit, private-sector entities also are eligible for investment assistance under the NTA program to carry out specific research or for other purposes set forth in 13 CFR 306.1. *See also* 42 U.S.C. 3147.

Project Period: EDA anticipates a two-year project period. Typically, EDA gives a recipient one year from the award date to complete the scope of work, which consists of completing all tasks under both project phases. EDA anticipates that Phase I will be completed approximately half way through the first year of the project period and that Phase II will be completed by the end of the first year of the project period. It is expected that the second year of the project period will consist of the training component after completion of the two phases.

A typical research project period begins with an initial meeting (kickoff meeting) between the recipient and EDA staff to ensure that all parties agree with the project terms. After the kickoff meeting, the recipient generally submits a final work plan to EDA staff for review and approval. Throughout the project period there will be regular contact between EDA staff and the recipient for updates on project progress. Interim progress reports are required throughout the project period. The schedule of interim progress reports will be determined subsequent to award.

Cost Sharing Requirement: Generally, the amount of the EDA grant may not exceed fifty percent of the total cost of the project. Projects may receive an additional amount that shall not exceed thirty percent, as determined by EDA, based on the relative needs of the region in which the project will be located. *See* section 204(a) of PWEDA (42 U.S.C. 3144) and 13 CFR 301.4(b)(1). The Assistant Secretary of Commerce for Economic Development has the discretion to establish a maximum EDA investment rate of up to one-hundred percent where the project: (i) Merits and is not otherwise feasible without an increase to the EDA investment rate; or (ii) will be of no or only incidental benefit to the recipient. *See* section 204(c)(3) of PWEDA (42 U.S.C. 3144) and 13 CFR 301.4(b)(4).

EDA will consider the nature of the contribution (cash or in-kind), the amount of any matching share funds, and fairly assess any in-kind contributions in evaluating the cost to the Government and the feasibility of the project budget (*see* the ''Evaluation Criteria'' section below). While cash contributions are preferred, in-kind contributions, fairly evaluated by EDA, may provide the non-federal share of the total project cost. *See* section 204(b) of PWEDA (42 U.S.C. 3144) and section III.B. of the FFO announcement for this request for applications. In-kind contributions, which may include assumptions of debt and contributions of space, equipment, and services, are eligible to be included as part of the non-federal share of eligible project costs if they meet applicable federal cost principles and uniform administrative requirements. Funds from other federal financial assistance awards are considered matching share funds only if authorized by statute, which may be determined by EDA's reasonable interpretation of the statute. *See* 13 CFR 300.3. The applicant must show that the matching share is committed to the project for the entire project period, will be available as needed, and is not conditioned or encumbered in any way that precludes its use consistent with the requirements of EDA investment assistance. *See* 13 CFR 301.5.

Intergovernmental Review: Applications under the NTA Program are not subject to Executive Order 12372, ''*Intergovernmental Review of Federal Programs.''*

Evaluation and Selection Procedures: To apply for an award under this request for applications, an eligible applicant must submit a completed application package to EDA before the

closing date and time specified in the **DATES** section of this notice, and in the manner provided in section IV. of the applicable FFO announcement. Any application received or transmitted, as the case may be, after 5 p.m. Eastern Time on September 8, 2009 will not be considered for funding. Applications that do not include all items required or that exceed the page limitations set forth in section IV.B. of the FFO announcement will be considered non-responsive and will not be considered by the review panel. Applications that meet all the requirements will be evaluated by a review panel comprised of at least three full-time federal employees, of whom at least one shall be an EDA employee. The review panel's rating and ranking of the applications will be presented to the Assistant Secretary, who is the Selecting Official. By September 30, 2009, EDA expects to notify the applicant selected for investment assistance under this notice.

Evaluation Criteria: The review panel will evaluate the applications and rate and rank them using the following criteria of approximate equal weight:

(1) Conformance with EDA's statutory and regulatory requirements, including the extent to which the proposed project satisfies the award requirements set out below and as provided in 13 CFR 306.2:

- Strengthens the capacity of local, State, or national organizations and institutions to undertake and promote effective economic development programs targeted to regions of distress;
- Benefits distressed regions; and
- Demonstrates innovative approaches to stimulate economic development in distressed regions.

(2) The degree to which an EDA investment will have strong organizational leadership, relevant project management experience, and a significant commitment of human resources talent to ensure the project's successful execution (*see* 13 CFR 301.8(b)).

(3) The ability of the applicant to implement the proposed project successfully (*see* 13 CFR 301.8).

(4) The clarity, precision, and applicability of the research methods proposed.

(5) The clarity, precision, and applicability of the analytical methods proposed.

(6) The clarity, precision, and applicability of the survey and sampling methods proposed.

(7) The feasibility of the budget presented.

(8) The cost to the Federal Government, using the best value to the government

For purposes of this request for applications, EDA will consider only applications submitted by applicants with the current capacity to undertake research that advances economic development practice and theory, and that have the potential for impact on a regional or national scale. *See* section 3 of PWEDA (42 U.S.C. 3122) and 13 CFR 300.3 and 306.2. The addition of research and project data to an existing Web site or the design of a companion Web site to disseminate the results of each research study and provide links to data encapsulated in reports free of charge is preferred.

Selection Factors: The Assistant Secretary, as the Selecting Official, expects to fund the highest ranking applications, as recommended by the review panel, submitted under this request for applications. However, if EDA does not receive satisfactory applications, the Assistant Secretary may not make any selection. Depending on the quality of the applications received, the Assistant Secretary may select more than one application for one research project and make no selection for another research project. Also, he may select an application out of rank order for the following reasons: (1) A determination that the selected application better meets the overall objectives of sections 2 and 207 of PWEDA (42 U.S.C. 3121 and 3147); (2) the applicant's performance under previous awards; or (3) the availability of funding.

The Department of Commerce Pre-Award Notification Requirements for Grants and Cooperative Agreements

Administrative and national policy requirements for all Department of Commerce awards are contained in the *Department of Commerce Pre-Award Notification Requirements for Grants and Cooperative Agreements,* published in the **Federal Register** on February 11, 2008 (73 FR 7696). This notice may be accessed through the **Federal Register** Internet Web site at *http://www.gpoaccess.gov/fr/retrieve.html,* making sure the radial button for the correct **Federal Register** volume is selected (here, 2008 **Federal Register**, Vol. 73), entering the **Federal Register** page number provided in the previous sentence (7696), and clicking the ''Submit'' button.

Paperwork Reduction Act

This request for applications contains collections of information subject to the requirements of the Paperwork Reduction Act (PRA). The Office of Management and Budget (OMB) has approved the use of Form ED–900 (*Application for Investment Assistance*) under control number 0610–0094. Forms SF–424 (*Application for Federal Assistance*); SF–424A (*Budget Information—Non-Construction Programs,* and SF–424B (*Assurances—Non-Construction Programs*) are approved under OMB control numbers 4040–0004, 4040–0006, and 4040–0007, respectively. Notwithstanding any other provision of law, no person is required to respond to, nor shall any person be subject to a penalty for failure to comply with, a collection of information subject to the requirements of the PRA unless the collection of information displays a currently valid OMB control number.

Executive Order 12866

This notice has been determined to be not significant for purposes of Executive Order 12866, ''*Regulatory Planning and Review.''*

Executive Order 13132

It has been determined that this notice does not contain ''policies that have Federalism implications,'' as that phrase is defined in Executive Order 13132, ''*Federalism.''*

Administrative Procedure Act/ Regulatory Flexibility Act

Prior notice and an opportunity for public comments are not required by the Administrative Procedure Act or any other law for rules concerning grants, benefits, and contracts (5 U.S.C. 553(a)(2)). Because notice and opportunity for comment are not required pursuant to 5 U.S.C. 553 or any other law, the analytical requirements of the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*) are inapplicable. Therefore, a regulatory flexibility analysis has not been prepared.

Dated: July 22, 2009.

Dennis Alvord,

Acting Deputy Assistant Secretary of Commerce for Economic Development.

[FR Doc. E9–17821 Filed 7–24–09; 8:45 am]

BILLING CODE 3510–24–P

DEPARTMENT OF DEFENSE

Department of the Air Force

Announcement of IS–GPS–200, IS–GPS–705, IS–GPS–800; Interface Control Working Group (ICWG) Meeting

AGENCY: Department of the Air Force, DoD.

ACTION: Meeting notice.

SUMMARY: This notice informs the public that the Global Positioning Systems

Wing will be hosting an Interface Control Working Group (ICWG) meeting for document/s IS–GPS–200 (NAVSTAR GPS Space Segment/Navigation User Interfaces), IS–GPS–705 (NAVSTAR GPS Space Segment/User Segment L5 Interfaces), and IS–GPS–800 (NAVSTAR GPS Space Segment/User Segment L1C Interfaces). The meeting will address PIRN/IRN changes and contractor redlines to the documents.

The ICWG is open to the general public. For those who would like to attend and participate in this ICWG meeting, you are requested to register to attend the meeting no later than 9 September 09. Please send the registration to *vimal.gopal.ctr@losangeles.af.mil* and provide your name, organization, telephone number, address, and country of citizenship. More information, including Comments Resolution Matrixes (CRMs) and track changed documents, will be posted at: *http://www.losangeles.af.mil/library/factsheets/factsheet.asp?id=9364*

Please send all CRM comments to Vimal Gopal by 9 September 09.

DATES: *Date/Time:*

29 September 2009: IS–GPS–200. 8 a.m.–4 p.m.

30 September 2009: IS–GPS–800. 8 a.m.–4 p.m.

1 October 2009: IS–GPS–705. 8 a.m.–4 p.m.

Location: Doubletree Hotel Los Angeles International Airport, 1985 East Grand Ave, El Segundo, CA 90245, (310) 322–0999.

FOR FURTHER INFORMATION CONTACT: Vimal Gopal *vimal.gopal.ctr@losangeles.af.mil* 1–310–416–8476 or Captain Neal Roach *neal.roach@losangeles.af.mil* 1–310–653–3771.

Bao-Anh Trinh,

DAF, Air Force Federal Register Liaison Officer.

[FR Doc. E9–17808 Filed 7–24–09; 8:45 am]

BILLING CODE 5001–05–P

DEPARTMENT OF DEFENSE

Department of the Air Force

Notice is Given of the Names of Members of a Performance Review Board for the Department of the Air Force

AGENCY: Department of the Air Force.

ACTION: Notice.

SUMMARY: Notice is given of the names of members of a Performance Review Board for the Department of the Air Force.

DATES: *Effective Date:* November 16, 2009

SUPPLEMENTARY INFORMATION: Section 4314(c)(1) through (5) of Title 5, U.S.C., requires each agency to establish, in accordance with regulations, one or more Senior Executive Service performance review boards. The board(s) shall review and evaluate the initial appraisal of senior executives' performance by supervisors and make recommendations to the appointing authority or rating official relative to the performance of these executives.

The members of the 2009 Performance Review Board for the U.S. Air Force are:

1. Board President—Gen Roger A. Brady, USAFE/Air Component, Commander/Director Joint Air Competency Center.

2. Lt Gen Loren M. Reno, Commander, Deputy Chief of Staff, Logistics, Installations and Mission Support, Headquarters, United States Air Force.

3. Mr. Tim A. Beyland, Assistant Deputy Chief of Staff for Manpower and Personnel.

4. Dr. Steven F. Butler, Air Force Material Command, Executive Director.

5. Mr. Theodore Williams, Auditor General of the United States Air Force.

6. Ms. Tawanda R. Rooney, Director, Intelligence Systems Support Office.

7. Mr. Timothy K. Bridges, Director, Communications, Installations and Mission Support.

8. Ms. Mary Chris Puckett, Director Installations and Logistics.

9. Mr. Joseph McDade, Army.

10. Mr. Charlie E. Williams, Jr., Director, Defense Contract Management Agency.

11. Mr. Ray Longerbeam (Naval Program Support Activity).

Additionally, all career status Air Force Tier 3 SES members not included in the above list are eligible to serve on the 2009 Performance Review Board and are hereby nominated for inclusion on an ad hoc basis in the event of absence(s). In addition, Mr. Bobby W. Smart, Director, Policy Planning and Resources, United States Air Force and Ms. Audrey Y. Davis, Deputy Assistant Secretary, Financial Operations, United States Air Force are nominated for inclusion on an ad hoc basis for the Tier 2 Performance Review Board in the event of absence(s).

FOR FURTHER INFORMATION CONTACT: Please direct any written comments or requests for information to Ms. Pereuna Johnson, Chief, Sustainment Division, Senior Executive Management, AF/DPSS, 1040 Air Force Pentagon, Washington, DC 20330–1040 (PH: 703–695–7677; or via e-mail at *pereuna.johnson@pentagon.af.mil*).

Bao-Anh Trinh,

Air Force Federal Register Liaison Officer.

[FR Doc. E9–17809 Filed 7–24–09; 8:45 am]

BILLING CODE 5001–05–P

DEPARTMENT OF EDUCATION

Notice of Proposed Information Collection Requests

AGENCY: Department of Education.

ACTION: Notice of proposed information collection requests.

SUMMARY: The Director, Information Collection Clearance Division, Regulatory Information Management Services, Office of Management, invites comments on the proposed information collection requests as required by the Paperwork Reduction Act of 1995.

DATES: An emergency review has been requested in accordance with the Act (44 U.S.C. Chapter 3507 (j)), since public harm is reasonably likely to result if normal clearance procedures are followed. Approval by the Office of Management and Budget (OMB) has been requested by August 7, 2009.

ADDRESSES: Written comments regarding the emergency review should be addressed to the Office of Information and Regulatory Affairs, Attention: Education Desk Officer, Office of Management and Budget; 725 17th Street, NW., Room 10222, New Executive Office Building, Washington, DC 20503 or e-mailed to *oira_submission@omb.eop.gov* or faxed to (202) 395–5806.

SUPPLEMENTARY INFORMATION: Section 3506 of the Paperwork Reduction Act of 1995 (44 U.S.C. Chapter 35) requires that the Director of OMB provide interested Federal agencies and the public an early opportunity to comment on information collection requests. The Office of Management and Budget (OMB) may amend or waive the requirement for public consultation to the extent that public participation in the approval process would defeat the purpose of the information collection, violate State or Federal law, or substantially interfere with any agency's ability to perform its statutory obligations. The Director, Information Collection Clearance Division, Regulatory Information Management Services, Office of Management, publishes this notice containing proposed information collection requests at the beginning of the Departmental review of the information collection. Each proposed information

collection, grouped by office, contains the following: (1) Type of review requested, e.g., new, revision, extension, existing or reinstatement; (2) Title; (3) Summary of the collection; (4) Description of the need for, and proposed use of, the information; (5) Respondents and frequency of collection; and (6) Reporting and/or Recordkeeping burden. ED invites public comment.

The Department of Education is especially interested in public comment addressing the following issues: (1) Is this collection necessary to the proper functions of the Department; (2) will this information be processed and used in a timely manner, (3) is the estimate of burden accurate; (4) how might the Department enhance the quality, utility, and clarity of the information to be collected, and (5) how might the Department minimize the burden of this collection on respondents, including through the use of information technology.

Dated: July 21, 2009.

Angela C. Arrington,

Director, Information Collection Clearance Division, Regulatory Information Management Services, Office of Management.

Office of Special Education and Rehabilitative Services

Type of Review: New.

Title: Report on IDEA Part B Maintenance of Effort Reduction (34 CFR 300.205(a)) and Coordinated Early Intervening Services (34 CFR 300.226)

Abstract: This package provides instructions and forms necessary for States to report the provisions of coordinated early intervening services (CEIS) and maintenance of effort (MOE) reduction in IDEA. The form satisfies reporting requirements and is used by OSEP to monitor SEAs and for Congressional reporting.

Additional Information: OSEP has not previously exercised its authority under 20 U.S.C. 1418(a)(3), which allows the Secretary to annually collect any information that may be needed to implement IDEA, to collect the information describe above because the Part B amounts received by LEAs from fiscal year to fiscal year rarely increased by an amount that would warrant an LEA to take advantage of the provisions of 34 CFR 300.205(a). Further, it has been assumed that LEAs are exercising their responsibilities under 34 CFR 300.226(d). However, due to the enactment of ARRA and the disbursement of $11.7 billion in IDEA Part B ARRA funds to LEAs (in addition to the regular FY 09 appropriation of $11.8 billion), the FY 2009 allocation for more LEAs far exceed those of FY 2008; thereby making it advantageous for these LEAs to reduce their MOE under 34 CFR 300.205 (a) and to reserve an amount under 34 CFR 300.226 to provide CEIS. Therefore, it is now necessary to collect information on the implementation of 34 CFR §§ 300.205 (a) and 300.226. Collecting this information will allow the Department to Monitor the reduction of MOE; Determine the amount of FY 2009 Part B funds (both regular IDEA and IDEA ARRA funds) reserved for CEIS; Exercise our fiduciary responsibilities to prevent fraud, waste and abuse and to ensure the effective use of FY 2009 Part B funds; Provide information to Congress and the public regarding LEAs that took advantage of these flexibilities.

Frequency: Annually.

Affected Public: State, Local, or Tribal Gov't, SEAs or LEAs.

Reporting and Recordkeeping Hour Burden:

Responses: 60.
Burden Hours: 1,032,480.

Requests for copies of the proposed information collection request may be accessed from *http://edicsweb.ed.gov,* by selecting the ''Browse Pending Collections'' link and by clicking on link number 4095. When you access the information collection, click on ''Download Attachments'' to view. Written requests for information should be addressed to U.S. Department of Education, 400 Maryland Avenue, SW., LBJ, Washington, DC 20202–4537. Requests may also be electronically mailed to the Internet address *ICDocketMgr@ed.gov* or faxed to 202–401–0920. Please specify the complete title of the information collection when making your request.

Comments regarding burden and/or the collection activity requirements should be electronically mailed to *ICDocketMgr@ed.gov*. Individuals who use a telecommunications device for the deaf (TDD) may call the Federal Information Relay Service (FIRS) at 1–800–877–8339.

[FR Doc. E9–17757 Filed 7–24–09; 8:45 am]

BILLING CODE 4000–01–P

DEPARTMENT OF EDUCATION

Office of Innovation and Improvement;

Overview Information: Charter Schools Program (CSP) Grants to Non-State Educational Agencies for Planning, Program Design, and Implementation and for Dissemination; Notice Inviting Applications for New Awards for Fiscal Year (FY) 2009

Catalog of Federal Domestic Assistance (CFDA) Numbers: 84.282B and 84.282C.

Dates:

Applications Available: July 27, 2009.

Deadline for Transmittal of Applications: August 26, 2009.

Deadline for Intergovernmental Review: September 16, 2009.

Full Text of Announcement

I. Funding Opportunity Description

Purpose of Program: The purpose of the CSP is to increase national understanding of the charter school model and to expand the number of high-quality charter schools available to students across the Nation by providing financial assistance for the planning, program design, and initial implementation of charter schools, and to evaluate the effects of charter schools, including their effects on students, student academic achievement, staff, and parents. The non-State educational agency (non-SEA) grants for planning, program design, and implementation, and non-SEA grants for dissemination provide funds for these purposes to eligible applicants in States in which the SEA does not have an approved application under the CSP.

Non-SEA eligible applicants that propose to use grant funds for planning, program design, and implementation must apply under CFDA No. 84.282B. Non-SEA eligible applicants that request funds for dissemination activities must submit their applications under CFDA No. 84.282C.

Priority: This priority is from the notice of final priorities for discretionary grant programs, published in the **Federal Register** on October 11, 2006 (71 FR 60046).

Competitive Preference Priority: For FY 2009, this priority is a competitive preference priority. Under 34 CFR 75.105(c)(2)(i), we award an additional 10 points to an application that meets this priority.

This priority is:

Secondary Schools. Projects that support activities and interventions aimed at improving the academic achievement of secondary school students who are at greatest risk of not meeting challenging State academic standards and not completing high school.

Program Authority: 20 U.S.C. 7221–7221j.

Applicable Regulations: (a) The Education Department General Administrative Regulations (EDGAR) in 34 CFR parts 74, 75, 76, 77, 79, 80, 81, 82, 84, 85, 86, 97, 98, and 99. (b) The notice of final priorities for discretionary grant programs published

in the **Federal Register** on October 11, 2006 (71 FR 60046).

Note: The regulations in 34 CFR part 79 apply to all applicants except federally recognized Indian tribes.

Note: The regulations in 34 CFR part 86 apply only to institutions of higher education.

Note: The regulations in 34 CFR part 99 apply only to educational agencies or institutions.

II. Award Information

Type of Award: Discretionary grants.

Estimated Available Funds: $3,000,000.

Estimated Range of Awards: $130,000–$175,000 per year.

Estimated Average Size of Awards: $150,000 per year.

Estimated Number of Awards: 17–23.

Note: The Department is not bound by any estimates in this notice.

Project Period: Up to 36 months under CFDA No. 84.282B. Up to 24 months under CFDA No. 84.282C.

Note: Planning and implementation grants awarded by the Secretary to non-SEA eligible applicants under CFDA No. 84.282B will be awarded for a period of up to 36 months, no more than 18 months of which may be used for planning and program design and no more than two years of which may be used for the initial implementation of a charter school. Dissemination grants awarded under CFDA No. 84.282C are for a period of up to two years.

III. Eligibility Information

1. *Eligible Applicants:*

(a) Planning and Initial Implementation (CFDA No. 84.282B): Non-SEA eligible applicants in States with a State statute specifically authorizing the establishment of charter schools and in which the SEA elects not to participate in the CSP or does not have an application approved under the CSP.

(b) Dissemination (CFDA No. 84.282C): Charter schools, as defined in section 5210(1) of the Elementary and Secondary Education Act of 1965, as amended (ESEA), in States in which the SEA elects not to participate in the CSP or does not have an application approved under the CSP.

Note: A charter school may apply for funds to carry out dissemination activities, whether or not the charter school previously applied for or received funds under the CSP for planning or implementation, if the charter school has been in operation for at least three consecutive years and has demonstrated overall success, including—

(1) Substantial progress in improving student academic achievement;

(2) High levels of parent satisfaction; and

(3) The management and leadership necessary to overcome initial start-up problems and establish a thriving, financially viable charter school.

Note: The term *eligible applicant* is defined in section 5210(3) of the ESEA. The following States currently have approved applications under the CSP: Arizona, Arkansas, California, Colorado, Connecticut, Delaware, District of Columbia, Florida, Georgia, Idaho, Illinois, Indiana, Kansas, Louisiana, Maryland, Massachusetts, Michigan, Minnesota, New Jersey, New Mexico, New York, Ohio, Oregon, Pennsylvania, South Carolina, Tennessee, Texas, Utah, Wisconsin. In these States, non-SEA eligible applicants and charter schools interested in participating in the CSP should contact the SEA for information related to the State's CSP subgrant competition.

2. *Cost Sharing or Matching:* This program does not require cost sharing or matching.

IV. Application and Submission Information

1. *Address to Request Application Package:* Erin Pfeltz, U.S. Department of Education, 400 Maryland Avenue, SW., room 4W255, Washington, DC 20202–5970. Telephone: (202) 205–3525 or by e-mail: *erin.pfeltz@ed.gov.*

If you use a telecommunications device for the deaf (TDD), call the Federal Relay Service (FRS), toll free, at 1–800–877–8339.

Individuals with disabilities can obtain a copy of the application package in an accessible format (*e.g.,* braille, large print, audiotape, or computer diskette) by contacting the program contact person listed in this section.

2. *Content and Form of Application Submission:* Requirements concerning the content of an application, together with the forms you must submit, are in the application package for this program.

Page Limit: The application narrative (Part III of the application) is where you, the applicant, address the selection criteria that reviewers use to evaluate your application. The Secretary strongly encourages applicants to limit Part III to the equivalent of no more than 50 pages, using the following standards:

- A ''page'' is 8.5″ x 11″, on one side only, with 1″ margins at the top, bottom, and both sides.
- Double space (no more than three lines per vertical inch) all text in the application narrative, including titles, headings, footnotes, quotations, references, and captions, as well as all text in charts, tables, figures, and graphs.
- Use a font that is either 12 point or larger or no smaller than 10 pitch (characters per inch).
- Use one of the following fonts: Times New Roman, Courier, Courier New, or Arial. An application submitted in any other font (including Times Roman or Arial Narrow) will not be accepted.

The page limit does not apply to Part I, the cover sheet; Part II, the budget section, including the narrative budget justification; Part IV, the assurances and certifications; or the one-page abstract, the resumes, the bibliography, or the letters of support. However, the page limit does apply to all of the application narrative section (Part III).

3. *Submission Dates and Times:*

Applications Available: July 27, 2009.

Deadline for Transmittal of Applications: August 26, 2009.

Applications for grants under this program must be submitted electronically using the Electronic Grant Application System (e-Application) accessible through the Department's e-Grants site. For information (including dates and times) about how to submit your application electronically, or in paper format by mail or hand delivery if you qualify for an exception to the electronic submission requirement, please refer to section IV. 6. *Other Submission Requirements* of this notice.

We do not consider an application that does not comply with the deadline requirements.

Individuals with disabilities who need an accommodation or auxiliary aid in connection with the application process should contact the person listed under **FOR FURTHER INFORMATION CONTACT** in section VII of this notice. If the Department provides an accommodation or auxiliary aid to an individual with a disability in connection with the application process, the individual's application remains subject to all other requirements and limitations in this notice.

Deadline for Intergovernmental Review: September 16, 2009.

4. *Intergovernmental Review:* This program is subject to Executive Order 12372 and the regulations in 34 CFR part 79. Information about Intergovernmental Review of Federal Programs under Executive Order 12372 is in the application package for this program.

5. *Funding Restrictions:*

Use of Funds for Post-Award Planning and Design of the Educational Program and Initial Implementation of the Charter School. A non-SEA eligible applicant receiving a grant under this program may use the grant funds only for—

(a) Post-award planning and design of the educational program, which may include (i) refinement of the desired educational results and of the methods for measuring progress toward achieving those results; and (ii) professional development of teachers and other staff who will work in the charter school; and

(b) Initial implementation of the charter school, which may include (i) informing the community about the school; (ii) acquiring necessary equipment and educational materials and supplies; (iii) acquiring or developing curriculum materials; and (iv) other initial operational costs that cannot be met from State or local sources. 20 U.S.C. 7221c(f)(3))

Use of Funds for Dissemination Activities. A charter school may use these funds to assist other schools in adapting the charter school's program (or certain aspects of the charter school's program), or to disseminate information about the charter school through such activities as—

(a) Assisting other individuals with the planning and start-up of one or more new public schools, including charter schools, that are independent of the assisting charter school and the assisting charter school's developers and that agree to be held to at least as high a level of accountability as the assisting charter school;

(b) Developing partnerships with other public schools, including charter schools, designed to improve student performance in each of the schools participating in the partnership;

(c) Developing curriculum materials, assessments, and other materials that promote increased student achievement and are based on successful practices within the assisting charter school; and

(d) Conducting evaluations and developing materials that document the successful practices of the assisting charter school and that are designed to improve student performance in other schools. (20 U.S.C. 7221c(f)(6))

We reference additional regulations outlining funding restrictions in the *Applicable Regulations* section in this notice.

6. *Other Submission Requirements:* Applications for grants under this program must be submitted electronically unless you qualify for an exception to this requirement in accordance with the instructions in this section.

a. *Electronic Submission of Applications.*

Applications for grants under the Charter School Programs—CFDA Numbers 84.282B and 84.282C—must be submitted electronically using e-Application, accessible through the Department's e-Grants Web site at: *http://e-grants.ed.gov.*

We will reject your application if you submit it in paper format unless, as described elsewhere in this section, you qualify for one of the exceptions to the electronic submission requirement and submit, no later than two weeks before the application deadline date, a written statement to the Department that you qualify for one of these exceptions. Further information regarding calculation of the date that is two weeks before the application deadline date is provided later in this section under *Exception to Electronic Submission Requirement.*

While completing your electronic application, you will be entering data online that will be saved into a database. You may not e-mail an electronic copy of a grant application to us.

Please note the following:

- You must complete the electronic submission of your grant application by 4:30:00 p.m., Washington, DC time, on the application deadline date. E-Application will not accept an application for this program after 4:30:00 p.m., Washington, DC time, on the application deadline date. Therefore, we strongly recommend that you do not wait until the application deadline date to begin the application process.
- The hours of operation of the e-Grants Web site are 6:00 a.m. Monday until 7:00 p.m. Wednesday; and 6:00 a.m. Thursday until 8:00 p.m. Sunday, Washington, DC time. Please note that, because of maintenance, the system is unavailable between 8:00 p.m. on Sundays and 6:00 a.m. on Mondays, and between 7:00 p.m. on Wednesdays and 6:00 a.m. on Thursdays, Washington, DC time. Any modifications to these hours are posted on the e-Grants Web site.
- You will not receive additional point value because you submit your application in electronic format, nor will we penalize you if you qualify for an exception to the electronic submission requirement, as described elsewhere in this section, and submit your application in paper format.
- You must submit all documents electronically, including all information you typically provide on the following forms: the Application for Federal Assistance (SF 424), the Department of Education Supplemental Information for SF 424, Budget Information—Non-Construction Programs (ED 524), and all necessary assurances and certifications. You must attach any narrative sections of your application as files in a .DOC (document), .RTF (rich text), or .PDF (Portable Document) format. If you upload a file type other than the three file types specified in this paragraph or submit a password protected file, we will not review that material.
- Your electronic application must comply with any page limit requirements described in this notice.
- Prior to submitting your electronic application, you may wish to print a copy of it for your records.
- After you electronically submit your application, you will receive an automatic acknowledgment that will include a PR/Award number (an identifying number unique to your application).
- Within three working days after submitting your electronic application, fax a signed copy of the SF 424 to the Application Control Center after following these steps:

(1) Print SF 424 from e-Application.

(2) The applicant's Authorizing Representative must sign this form.

(3) Place the PR/Award number in the upper right hand corner of the hard-copy signature page of the SF 424.

(4) Fax the signed SF 424 to the Application Control Center at (202) 245–6272.

- We may request that you provide us original signatures on other forms at a later date.

Application Deadline Date Extension in Case of e-Application Unavailability: If you are prevented from electronically submitting your application on the application deadline date because e-Application is unavailable, we will grant you an extension of one business day to enable you to transmit your application electronically, by mail, or by hand delivery. We will grant this extension if—

(1) You are a registered user of e-Application and you have initiated an electronic application for this competition; and

(2) (a) E-Application is unavailable for 60 minutes or more between the hours of 8:30 a.m. and 3:30 p.m., Washington, DC time, on the application deadline date; or

(b) E-Application is unavailable for any period of time between 3:30 p.m. and 4:30:00 p.m., Washington, DC time, on the application deadline date.

We must acknowledge and confirm these periods of unavailability before granting you an extension. To request this extension or to confirm our acknowledgment of any system unavailability, you may contact either (1) the person listed elsewhere in this notice under **FOR FURTHER INFORMATION CONTACT** (see VII. Agency Contact) or (2) the e-Grants help desk at 1–888–336–

8930. If e-Application is unavailable due to technical problems with the system and, therefore, the application deadline is extended, an e-mail will be sent to all registered users who have initiated an e-Application. Extensions referred to in this section apply only to the unavailability of e-Application.

Exception to Electronic Submission Requirement: You qualify for an exception to the electronic submission requirement, and may submit your application in paper format, if you are unable to submit an application through e-Application because—

• You do not have access to the Internet; or

• You do not have the capacity to upload large documents to e-Application;

and

• No later than two weeks before the application deadline date (14 calendar days or, if the fourteenth calendar day before the application deadline date falls on a Federal holiday, the next business day following the Federal holiday), you mail or fax a written statement to the Department, explaining which of the two grounds for an exception prevents you from using the Internet to submit your application. If you mail your written statement to the Department, it must be postmarked no later than two weeks before the application deadline date. If you fax your written statement to the Department, we must receive the faxed statement no later than two weeks before the application deadline date.

Address and mail or fax your statement to: Erin Pfeltz, U.S. Department of Education, 400 Maryland Avenue, SW., room 4W255, Washington, DC 20202–5970. FAX: (202) 205–5630.

Your paper application must be submitted in accordance with the mail or hand delivery instructions described in this notice.

b. *Submission of Paper Applications by Mail.*

If you qualify for an exception to the electronic submission requirement, you may mail (through the U.S. Postal Service or a commercial carrier) your application to the Department. You must mail the original and two copies of your application, on or before the application deadline date, to the Department at the following address: U.S. Department of Education, Application Control Center, Attention: CFDA Number 84.282B or 84.282C, LBJ Basement Level 1, 400 Maryland Avenue, SW., Washington, DC 20202–4260.

You must show proof of mailing consisting of one of the following:

(1) A legibly dated U.S. Postal Service postmark.

(2) A legible mail receipt with the date of mailing stamped by the U.S. Postal Service.

(3) A dated shipping label, invoice, or receipt from a commercial carrier.

(4) Any other proof of mailing acceptable to the Secretary of the U.S. Department of Education.

If you mail your application through the U.S. Postal Service, we do not accept either of the following as proof of mailing:

(1) A private metered postmark.

(2) A mail receipt that is not dated by the U.S. Postal Service.

If your application is postmarked after the application deadline date, we will not consider your application.

Note: The U.S. Postal Service does not uniformly provide a dated postmark. Before relying on this method, you should check with your local post office.

c. *Submission of Paper Applications by Hand Delivery.*

If you qualify for an exception to the electronic submission requirement, you (or a courier service) may deliver your paper application to the Department by hand. You must deliver the original and two copies of your application, by hand, on or before the application deadline date, to the Department at the following address: U.S. Department of Education, Application Control Center, Attention: CFDA Number 84.282B or 84.282C, 550 12th Street, SW., Room 7041, Potomac Center Plaza, Washington, DC 20202–4260.

The Application Control Center accepts hand deliveries daily between 8:00 a.m. and 4:30:00 p.m., Washington, DC time, except Saturdays, Sundays, and Federal holidays.

Note for Mail or Hand Delivery of Paper Applications: If you mail or hand deliver your application to the Department—

(1) You must indicate on the envelope and—if not provided by the Department—in Item 11 of the SF 424 the CFDA number, including suffix letter, if any, of the competition under which you are submitting your application; and

(2) The Application Control Center will mail to you a notification of receipt of your grant application. If you do not receive this grant notification within 15 business days from the application deadline date, you should call the U.S. Department of Education Application Control Center at (202) 245–6288.

V. Application Review Information

Selection Criteria: Non-SEA eligible applicants applying for CSP grant funds must address both the statutory application requirements and the selection criteria described in the following paragraphs. Each applicant applying for CSP grant funds may choose to respond to the application requirements in the context of its responses to the selection criteria.

The statutory application requirements for all applicants submitting under CFDA Nos. 84.282B and 84.282C are listed in paragraph (a) in this section.

The selection criteria for non-SEA applicants for *Planning, Program Design, and Implementation Grants (CFDA No. 84.282B)* are listed in paragraph (b) in this section.

The selection criteria for non-SEA applicants for *Dissemination Grants (CFDA No. 84.282C)* are listed in paragraph (c) in this section.

(a) *Application Requirements (CFDA Nos. 84.282B and 84.282C).* (i) Describe the educational program to be implemented by the proposed charter school, including how the program will enable all students to meet challenging State student academic achievement standards, the grade levels or ages of students to be served, and the curriculum and instructional practices to be used;

(ii) Describe how the charter school will be managed;

(iii) Describe the objectives of the charter school and the methods by which the charter school will determine its progress toward achieving those objectives;

(iv) Describe the administrative relationship between the charter school and the authorized public chartering agency;

(v) Describe how parents and other members of the community will be involved in the planning, program design, and implementation of the charter school;

(vi) Describe how the authorized public chartering agency will provide for continued operation of the charter school once the Federal grant has expired, if that agency determines that the charter school has met its objectives;

(vii) If the charter school desires the Secretary to consider waivers under the authority of the CSP, include a request and justification for waivers of any Federal statutory or regulatory provisions that the applicant believes are necessary for the successful operation of the charter school and a description of any State or local rules, generally applicable to public schools, that will be waived for, or otherwise not apply to, the school;

(viii) Describe how the grant funds will be used, including how these funds will be used in conjunction with other Federal programs administered by the Secretary;

(ix) Describe how students in the community will be informed about the charter school and be given an equal opportunity to attend the charter school;

(x) Describe how a charter school that is considered an LEA under State law, or an LEA in which a charter school is located, will comply with sections 613(a)(5) and 613(e)(1)(B) of the Individuals with Disabilities Education Act; and

(xi) If the eligible applicant desires to use grant funds for dissemination activities under section 5202(c)(2)(C) of the ESEA, describe those activities and how those activities will involve charter schools and other public schools, LEAs, developers, and potential developers.

(b) *Selection Criteria (CFDA No. 84.282B).* The following selection criteria are from section 5204 of the ESEA and 34 CFR 75.210 of EDGAR.

The maximum possible score for all the criteria in this section is 130 points.

The maximum possible score for each criterion is indicated in parentheses following the criterion.

In evaluating an application from a non-SEA eligible applicant for Planning, Program Design, and Implementation, the Secretary considers the following criteria:

(i) The quality of the proposed curriculum and instructional practices (20 points).

Note: The Secretary encourages the applicant to describe the educational program to be implemented by the proposed charter school, including how the program will enable all students to meet challenging State student academic achievement standards, the grade levels or ages of students to be served, and the curriculum and instructional practices to be used.

(ii) The degree of flexibility afforded by the SEA and, if applicable, the LEA to the charter school (10 points).

Note: The Secretary encourages the applicant to include a description of how the State's law establishes an administrative relationship between the charter school and the authorized public chartering agency and exempts the charter school from significant State or local rules that inhibit the flexible operation and management of public schools.

The Secretary also encourages the applicant to include a description of the degree of autonomy the charter school will have over such matters as the charter school's budget, expenditures, daily operation, and personnel in accordance with its State's charter school law.

(iii) The extent of community support for the application (20 points).

Note: The Secretary encourages the applicant to describe how parents and other members of the community will be informed about the charter school, and how students will be given an equal opportunity to attend the charter school.

(iv) The ambitiousness of the objectives for the charter school (10 points).

Note: The Secretary encourages the applicant to describe the objectives for the charter school and how these grant funds will be used, including how these funds will be used in conjunction with other Federal programs administered by the Secretary, in meeting these objectives.

(v) The quality of the strategy for assessing achievement of those objectives (20 points).

(vi) The likelihood that the charter school will meet those objectives and improve educational results for students during and after the period of Federal financial assistance (10 points).

(vii) The extent to which the proposed project encourages parental involvement (10 points).

Note: The Secretary encourages the applicant to describe how parents and other members of the community will be involved in the planning, program design, and implementation of the charter school.

(viii) The quality of the personnel who will carry out the proposed project. In determining the quality of project personnel, the Secretary considers the qualifications, including relevant training and experience, of the project director; and the extent to which the applicant encourages applications for employment from persons who are members of groups that have traditionally been underrepresented based on race, color, national origin, gender, age, or disability (10 points).

(ix) The contribution the charter school will make in assisting educationally disadvantaged and other students to achieve to State academic content standards and State student academic achievement standards (20 points).

(c) *Selection Criteria (CFDA No. 84.282C).* The following selection criteria are from section 5204 of the ESEA and 34 CFR 75.210 of EDGAR.

The maximum possible score for all the criteria in this section is 110 points.

The maximum possible score for each criterion is indicated in parentheses following the criterion.

In evaluating an application from a non-SEA eligible applicant for a dissemination grant, the Secretary considers the following criteria:

(i) The quality of the proposed dissemination activities and the likelihood that those activities will improve student achievement (30 points).

Note: The Secretary encourages the applicant to describe the objectives for the proposed dissemination activities and the methods by which the charter school will determine its progress toward achieving those objectives.

(ii) The extent to which the school has demonstrated overall success, including—

(1) Substantial progress in improving student achievement (10 points);

(2) High levels of parent satisfaction (10 points); and

(3) The management and leadership necessary to overcome initial start-up problems and establish a thriving, financially viable charter school (10 points).

(iii) The extent to which the results of the proposed project will be disseminated in a manner that will enable others to use the information or strategies (20 points).

(iv) The quality of the personnel who will carry out the proposed project. In determining the quality of project personnel, the Secretary considers the qualifications, including relevant training and experience, of the project director and the extent to which the applicant encourages applications for employment from persons who are members of groups that have traditionally been underrepresented based on race, color, national origin, gender, age, or disability (10 points).

(v) The quality of the management plan for the proposed project. In determining the quality of the management plan for the proposed project, the Secretary considers the adequacy of the management plan to achieve the objectives of the proposed project on time and within budget, including clearly defined responsibilities, timelines, and milestones for accomplishing project tasks (20 points).

VI. Award Administration Information

1. *Award Notices:* If your application is successful, we notify your U.S. Representative and U.S. Senators and send you a Grant Award Notification (GAN). We may notify you informally, also.

If your application is not evaluated or not selected for funding, we notify you.

2. *Administrative and National Policy Requirements:* We identify administrative and national policy requirements in the application package and reference these and other requirements in the *Applicable Regulations* section in this notice.

We reference the regulations outlining the terms and conditions of an award in the *Applicable Regulations* section in this notice and include these and other specific conditions in the GAN. The GAN also incorporates your approved

application as part of your binding commitments under the grant.

3. *Reporting:* At the end of your project period, you must submit a final performance report, including financial information, as directed by the Secretary. If you receive a multi-year award, you must submit an annual performance report that provides the most current performance and financial expenditure information as directed by the Secretary under 34 CFR 75.118. The Secretary may also require more frequent performance reports under 34 CFR 75.720(c). For specific requirements on reporting, please go to *http://www.ed.gov/fund/grant/apply/appforms/appforms.html*.

4. *Performance Measures:* The goal of the CSP is to support the creation and development of a large number of high-quality charter schools that are free from State or local rules that inhibit flexible operation, are held accountable for enabling students to reach challenging State performance standards, and are open to all students. The Secretary has two performance indicators to measure this goal: (1) The number of charter schools in operation around the Nation, and (2) the percentage of charter school students who are achieving at or above the proficient level on State examinations in mathematics and reading. Additionally, the Secretary has established the following measure to examine the efficiency of the CSP: Federal cost per student in implementing a successful school (defined as a school in operation for three or more consecutive years).

All grantees will be expected to submit an annual performance report documenting their contribution in assisting the Department in meeting these performance measures.

VII. Agency Contact

FOR FURTHER INFORMATION CONTACT: Erin Pfeltz, U.S. Department of Education, 400 Maryland Avenue, SW., room 4W255, Washington, DC 20202–5970. Telephone: (202) 205–3525 or by e-mail: *erin.pfeltz@ed.gov.*

If you use a TDD, call the FRS, toll free, at 1–800–877–8339.

VIII. Other Information

Accessible Format: Individuals with disabilities can obtain this document and a copy of the application package in an accessible format (*e.g.,* braille, large print, audiotape, or computer diskette) on request to the program contact person listed under **FOR FURTHER INFORMATION CONTACT** in section VII of this notice.

Electronic Access to This Document: You can view this document, as well as all other documents of this Department published in the **Federal Register**, in text or Adobe Portable Document Format (PDF) on the Internet at the following site: *http://www.ed.gov/news/fedregister.*

To use PDF you must have Adobe Acrobat Reader, which is available free at this site. If you have questions about using PDF, call the U.S. Government Printing Office (GPO), toll free, at 1–888–293–6498; or in the Washington, DC, area at (202) 512–1530.

Note: The official version of this document is the document published in the **Federal Register.** Free Internet access to the official edition of the **Federal Register** and the Code of Federal Regulations is available on GPO Access at: *http://www.gpoaccess.gov/nara/index.html.*

Dated: July 22, 2009.

James H. Shelton, III,

Assistant Deputy Secretary for Innovation and Improvement.

[FR Doc. E9–17851 Filed 7–24–09; 8:45 am]

BILLING CODE 4000–01–P

DEPARTMENT OF ENERGY

Western Area Power Administration

Boulder Canyon Project

AGENCY: Western Area Power Administration, DOE.

ACTION: Notice of base charge and rates.

SUMMARY: The Deputy Secretary of Energy approved the Fiscal Year (FY) 2010 Base Charge and Rates (Rates) for Boulder Canyon Project (BCP) electric service provided by the Western Area Power Administration (Western). The Rates will provide sufficient revenue to pay all annual costs, including interest expense, and repay investments within the allowable period.

DATES: The Rates will be effective the first day of the first full billing period beginning on or after October 1, 2009. These Rates will stay in effect through September 30, 2010, or until superseded by other rates.

FOR FURTHER INFORMATION CONTACT: Mr. Jack Murray, Rates Manager, Desert Southwest Customer Service Region, Western Area Power Administration, P.O. Box 6457, Phoenix, AZ 85005–6457, (602) 605–2442, e-mail *jmurray@wapa.gov.*

SUPPLEMENTARY INFORMATION: Rate Schedule BCP–F7, Rate Order No. WAPA–120, effective October 1, 2005 through September 30, 2010, allows for an annual recalculation of the rates.[1] This notice sets forth the recalculated rates for FY 2010.

Under Rate Schedule BCP–F7, the existing composite rate effective on October 1, 2008 was 18.62 mills per kilowatthour (mills/kWh). The base charge was $70,213,497, the energy rate was 9.31 mills/kWh, and the capacity rate was $1.73 per kilowattmonth (kWmonth). The re-calculated rates for BCP electric service, to be effective October 1, 2009, will result in an overall composite rate of 18.93 mills/kWh. The proposed rates were calculated using the FY 2010 Final Master Schedule. This resulted in an increase of approximately 1.70 percent when compared with the existing BCP electric service composite rate. The increase is due to a decrease in the projected energy sales and an increase in the annual revenue requirement. The FY 2010 base charge is increasing to $70,681,340. The major contributing factors to the base charge increase is the increase in annual operation and maintenance expenses and uprating program payments. The FY 2010 energy rate of 9.47 mills/kWh is approximately a 1.70 percent increase from the existing energy rate of 9.31 mills/kWh. The increase in the energy rate is due to a decrease in the projected energy sales resulting from a decrease in projected water releases. The FY 2010 capacity rate of $1.76/kWmonth reflects an increase of approximately 1.22 percent compared to the existing capacity rate of $1.73/kWmonth. The increase in the capacity rate is due to a decrease in the projected capacity sales resulting from dropping lake elevations. Another factor contributing to the increase in both the energy and capacity rates is the increase in the annual revenue requirement. The following summarizes the steps taken by Western to ensure involvement of all Interested Parties in determining the Rates:

1. A **Federal Register** notice was published on February 2, 2009 (74 FR 5839), announcing the proposed rate adjustment process, initiating a public consultation and comment period, announcing public information and public comment forums, and presenting procedures for public participation.

2. Discussion of the proposed Rates was initiated at an informal BCP Contractor meeting held March 11, 2009 in Phoenix, Arizona. At this informal meeting, representatives from Western and the Bureau of Reclamation (Reclamation) explained the basis for

[1] FERC confirmed and approved Rate Order No. WAPA–120 on June 22, 2006, in Docket No. EF05–5091–000, *See United States Department of Energy, Western Area Power Administration, Boulder Canyon Project,* 115 FERC ¶ 61.362 (June 22, 2006).

estimates used to calculate the Rates and held a question and answer session.

3. At the public information forum held on April 1, 2009, in Phoenix, Arizona, Western and Reclamation representatives explained the proposed Rates for FY 2010 in greater detail and held a question and answer session.

4. A public comment forum held on April 22, 2009, in Phoenix, Arizona, provided the public an opportunity to comment for the record. No individuals commented at this forum.

5. Western received two comment letters during the 90-day consultation and comment period. The consultation and comment period ended May 4, 2009. All comments were considered in developing the Rates for FY 2010. Written comments were received from: Colorado River Commission of Nevada, Las Vegas, Nevada; Irrigation & Electrical Districts Association of Arizona, Phoenix, Arizona.

Comments and responses, paraphrased for brevity when not affecting the meaning of the statements, are presented below.

Post 9–11 Security Cap

Comment: A BCP Contractor indicated they are reviewing and will provide comments to Reclamation's Directive and Standard regarding Reimbursability of Security Costs (Directive) and whether the Directive is implemented or not, Western and Reclamation should continue to provide detailed reports to the BCP customers regarding post 9–11 security costs so that the customers will be able to follow how the law is being applied to the Boulder Canyon Project as well as all Reclamation projects.

Response: Western and Reclamation appreciate the BCP Contractors' concern regarding the Directive. Regardless of the final implementation of the Directive, Reclamation and Western are committed to continue to provide information regarding the reimbursability of security costs to Boulder Canyon Project.

Extension of Consultation and Comment Period

Comment: An Interested Party requested the comment period for this rate proceeding be extended 30 days. The reason given for this suggestion was due to the possibility that some of the security cost data provided by Reclamation to Western for inclusion in the base charge calculation could be declared non-reimbursable expenditures once Reclamation implements their Directive.

Response: Prior to finalizing an annual rate package, the rate process allows time for Western and Reclamation to determine if it is necessary to revise any costs that are included in the calculation of the proposed base charge and rates. If Reclamation's Directive is implemented prior to finalizing the calculation of the proposed FY 2010 base charge and rates, and if the implementation results in changes to the security costs included in the proposed FY 2010 base charge and rates, Western will in turn revise the data prior to finalizing the proposed rates. If Reclamation's Directive is not implemented prior to the calculation of the proposed base charge and rates being finalized, any costs subsequently deemed non-reimbursable that were included in the FY 2010 rates will be carried forward and reduce the FY 2011 base charge and rates. Western and Reclamation are committed to coordinate very closely regarding any necessary revisions to the FY 2010 base charge and rates. Therefore there is no need to reopen or extend the public process.

BCP Electric Service Rates

BCP electric service rates are designed to recover an annual revenue requirement that includes operation and maintenance expenses, payments to states, visitor services, the uprating program, replacements, investment repayment and interest expense. Western's Power Repayment Study (PRS) allocates the projected annual revenue requirement for electric service equally between capacity and energy.

Availability of Information

Information about this base charge and rate adjustment, including PRS, comments, letters, memorandums, and other supporting material developed or maintained by Western that was used to develop the FY 2010 BCP Rates, is available for public review in the Desert Southwest Customer Service Regional Office, Western Area Power Administration, 615 South 43rd Avenue, Phoenix, Arizona. The information is also available on Western's Web site at *http://www.wapa.gov/dsw/pwrmkt/BCP/RateAdjust.htm.*

Ratemaking Procedure Requirements

BCP electric service rates are developed under the Department of Energy Organization Act (42 U.S.C. 7101–7352), through which the power marketing functions of the Secretary of the Interior and Reclamation under the Reclamation Act of 1902 (ch. 1093, 32 Stat. 388), as amended and supplemented by subsequent enactments, particularly section 9(c) of the Reclamation Project Act of 1939 (43 U.S.C. 485h(c)), and other acts that specifically apply to the project involved, were transferred to and vested in the Secretary of Energy, acting by and through Western.

By Delegation Order No. 00–037.00, effective December 6, 2001, the Secretary of Energy delegated: (1) The authority to develop long-term power and transmission rates on a non-exclusive basis to Western's Administrator, (2) the authority to confirm, approve, and place such rates into effect on an interim basis to the Deputy Secretary of Energy, and (3) the authority to confirm, approve, and place into effect on a final basis, to remand or to disapprove such rates to FERC. Existing Department of Energy procedures for public participation in electric service rate adjustments are located at 10 CFR part 903, effective September 18, 1985 (50 FR 37835), and 18 CFR part 300. DOE procedures were followed by Western in developing the rate formula approved by FERC on June 22, 2006, at 115 FERC ¶ 61362.[2]

The Boulder Canyon Project Implementation Agreement requires that, prior to October 1 of each rate year, Western determines the annual rates for the next fiscal year. The rates for the first rate year, and each fifth rate year thereafter, become effective provisionally upon approval by the Deputy Secretary of Energy (Deputy Secretary) subject to final approval by FERC. For all other rate years, the rates become effective on a final basis upon approval by the Deputy Secretary. Because FY 2010 is an interim year these rates become effective on a final basis upon approval by the Deputy Secretary.

Western will continue to provide annual rates to the BCP Contractors by October 1 of each year using the same ratesetting formula. The rates are reviewed annually and adjusted upward or downward to assure sufficient revenues are collected to achieve payment of all costs and financial obligations associated with the project. Each fiscal year, Western prepares a PRS for the BCP to update actual revenues

[2] The existing ratesetting formula was established in Rate Order No. WAPA–70 on April 19, 1996, in Docket No. EF96–5091–000 at 75 FERC ¶ 62050, for the period beginning November 1, 1995, and ending September 30, 2000. Rate Order No. WAPA–94, extending the existing ratesetting formula beginning on October 1, 2000, and ending September 30, 2005, was approved on July 31, 2001, in Docket No. EF00–5092–000 at 96 FERC ¶ 61171. Rate Order No. WAPA–120, extending the existing ratesetting formula for another five-year period beginning on October 1, 2005, and ending September 30, 2010, was approved on June 22, 2006, in Docket No. EF05–5091–000 at 115 FERC ¶ 61362.

and expenses including interest, estimates of future revenues, expenses, and capitalized costs.

The BCP ratesetting formula includes a base charge, an energy rate, and a capacity rate. The ratesetting formula was used to determine the BCP FY 2010 Rates.

Western proposed a FY 2010 base charge of $70,681,340, an energy rate of 9.47 mills/kWh, and a capacity rate of $1.76/kWmonth.

Consistent with procedures set forth in 10 CFR part 903 and 18 CFR part 300, Western held a consultation and comment period. The notice of the proposed FY 2010 Rates for electric service was published in the **Federal Register** on February 2, 2009 (74 FR 5839).

Under Delegation Order Nos. 00–037.00 and 00–001.00C, and in compliance with 10 CFR part 903 and 18 CFR part 300, I hereby approve the FY 2010 Rates for BCP Electric Service on a final basis under Rate Schedule BCP–F7 through September 30, 2010.

Dated: July 20, 2009.

Daniel B. Poneman,

Deputy Secretary.

[FR Doc. E9–17801 Filed 7–24–09; 8:45 am]

BILLING CODE 6450–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

Combined Notice of Filings #1

July 20, 2009.

Take notice that the Commission received the following electric rate filings:

Docket Numbers: ER98–4289–007.

Applicants: Montana-Dakota Utilities Company.

Description: Montana-Dakota Utilities Co. submits amended tariff sheets, FERC Electric Tariff 1st Revised Volume 2, *etc.*

Filed Date: 07/16/2009.

Accession Number: 20090716–0086.

Comment Date: 5 p.m. Eastern Time on Thursday, August 6, 2009.

Docket Numbers: ER99–3151–013.

Applicants: PSEG Energy Resources & Trade LLC.

Description: Public Service Electric and Gas Company *et al* submits Substitute Fourth Revised Sheet 3 *et al* to FERC Electric Tariff, Original Volume 1, effective 6/1/09.

Filed Date: 07/15/2009.

Accession Number: 20090716–0073.

Comment Date: 5 p.m. Eastern Time on Wednesday, August 5, 2009.

Docket Numbers: ER01–316–033.

Applicants: ISO New England Inc.

Description: ISO New England Inc. submits Index of Customers for the second quarter of 2009 under the ISO's FERC Tariff for Transmission Dispatch and Power Administration Services.

Filed Date: 07/15/2009.

Accession Number: 20090716–0070.

Comment Date: 5 p.m. Eastern Time on Wednesday, August 5, 2009.

Docket Numbers: ER09–889–002.

Applicants: City Of Dover Delaware.

Description: City of Dover submits Original Sheet 1 to Rate Schedule FERC 1.

Filed Date: 07/16/2009.

Accession Number: 20090717–0036.

Comment Date: 5 p.m. Eastern Time on Thursday, August 6, 2009.

Docket Numbers: ER09–1359–001.

Applicants: PECO Energy Company.

Description: PECO Energy Company submits missing pages 2 and 3 of the Transmission Facilities Agreement.

Filed Date: 07/15/2009.

Accession Number: 20090716–0046.

Comment Date: 5 p.m. Eastern Time on Wednesday, August 5, 2009.

Docket Numbers: ER09–1450–000.

Applicants: Energy Productivity Services Inc.

Description: Energy Productivity Services, Inc. submits FERC Electric Tariff, Original Volume 1.

Filed Date: 07/16/2009.

Accession Number: 20090717–0022.

Comment Date: 5 p.m. Eastern Time on Thursday, August 6, 2009.

Docket Numbers: ER09–1453–000.

Applicants: Gateway Energy Services Corporation.

Description: Getaway Energy Services Corporation submits the Petition for Acceptance of Initial Tariff, Waivers and Blanket Authorization submitted by Gateway.

Filed Date: 07/16/2009.

Accession Number: 20090716–0085.

Comment Date: 5 p.m. Eastern Time on Thursday, August 6, 2009.

Docket Numbers: ER09–1454–000.

Applicants: ISO New England Inc.

Description: ISO New England Inc. submits State Certification of the Connecticut Department of Public Utility Control.

Filed Date: 07/15/2009.

Accession Number: 20090716–0071.

Comment Date: 5 p.m. Eastern Time on Wednesday, August 5, 2009.

Docket Numbers: ER09–1455–000.

Applicants: PJM Interconnection, L.L.C.

Description: PJM Interconnection, LLC submits executed interconnection service agreement among PJM, AES Fox Wind, LLC, and Pennsylvania Electric Company.

Filed Date: 07/15/2009.

Accession Number: 20090716–0072.

Comment Date: 5 p.m. Eastern Time on Wednesday, August 5, 2009.

Docket Numbers: ER09–1356–000.

Applicants: Grand Ridge Energy LL.

Description: Supplement to Filing of Assignment, Co-Tenancy and Shared Facilities Agreement and Request for Waivers of the Grand Ridge Companies under ER09–1356, *et al.*

Filed Date: 07/16/2009.

Accession Number: 20090716–5099.

Comment Date: 5 p.m. Eastern Time on Thursday, August 6, 2009.

Docket Numbers: ER09–1450–000.

Applicants: Energy Productivity Services Inc.

Description: Energy Productivity Services, Inc submits FERC Electric Tariff, Original Volume 1.

Filed Date: 07/16/2009.

Accession Number: 20090717–0022.

Comment Date: 5 p.m. Eastern Time on Thursday, August 6, 2009.

Docket Numbers: ER09–1453–000.

Applicants: Gateway Energy Services Corporation.

Description: Getaway Energy Services Corporation submits the Petition for Acceptance of Initial Tariff, Waivers and Blanket Authorization submitted by Gateway.

Filed Date: 07/16/2009.

Accession Number: 20090716–0085.

Comment Date: 5 p.m. Eastern Time on Thursday, August 6, 2009.

Docket Numbers: ER09–1456–000.

Applicants: Southern California Edison Company.

Description: Southern California Edison Company submits a Small Generator Interconnection Agreement and a Service Agreement for Wholesale Distribution Service *etc.*

Filed Date: 07/16/2009.

Accession Number: 20090716–0084.

Comment Date: 5 p.m. Eastern Time on Thursday, August 6, 2009.

Docket Numbers: ER09–1457–000.

Applicants: Southwest Power Pool, Inc.

Description: Southwest Power Pool, Inc submits notices of cancellation for six Network Integration Transmission Service Agreements and the corresponding Network Operating Agreements.

Filed Date: 07/16/2009.

Accession Number: 20090717–0034.

Comment Date: 5 p.m. Eastern Time on Thursday, August 6, 2009.

Docket Numbers: ER09–1458–000; ER09–1459–000; ER09–1460–000; ER09–1461–000.

Applicants: WPS Canada Generation, Inc.; Integrys Energy Services, Inc.; WPS

Westwood Generation, LLC; WPS New England Generation, Inc.

Description: Integrys Energy Services, Inc et al submits revised cover sheets cancelling several inter-affiliate market based rate service agreements and a brokering and dispatch agreement under ER09–1458 *et al.*

Filed Date: 07/16/2009.

Accession Number: 20090717–0035.

Comment Date: 5 p.m. Eastern Time on Thursday, August 6, 2009.

Any person desiring to intervene or to protest in any of the above proceedings must file in accordance with Rules 211 and 214 of the Commission's Rules of Practice and Procedure (18 CFR 385.211 and 385.214) on or before 5 p.m. Eastern time on the specified comment date. It is not necessary to separately intervene again in a subdocket related to a compliance filing if you have previously intervened in the same docket. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Anyone filing a motion to intervene or protest must serve a copy of that document on the Applicant. In reference to filings initiating a new proceeding, interventions or protests submitted on or before the comment deadline need not be served on persons other than the Applicant.

The Commission encourages electronic submission of protests and interventions in lieu of paper, using the FERC Online links at *http://www.ferc.gov.* To facilitate electronic service, persons with Internet access who will eFile a document and/or be listed as a contact for an intervenor must create and validate an eRegistration account using the eRegistration link. Select the eFiling link to log on and submit the intervention or protests.

Persons unable to file electronically should submit an original and 14 copies of the intervention or protest to the Federal Energy Regulatory Commission, 888 First St. NE., Washington, DC 20426.

The filings in the above proceedings are accessible in the Commission's eLibrary system by clicking on the appropriate link in the above list. They are also available for review in the Commission's Public Reference Room in Washington, DC. There is an eSubscription link on the Web site that enables subscribers to receive e-mail notification when a document is added to a subscribed dockets(s). For assistance with any FERC Online service, please e-mail *FERCOnlineSupport@ferc.gov.* or call (866) 208–3676 (toll free). For TTY, call (202) 502–8659.

Nathaniel J. Davis, Sr.,

Deputy Secretary.

[FR Doc. E9–17759 Filed 7–24–09; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. ER09–1450–000]

Energy Productivity Services, Inc.; Supplemental Notice That Initial Market-Based Rate Filing Includes Request for Blanket Section 204 Authorization

July 20, 2009.

This is a supplemental notice in the above-referenced proceeding, of Energy Productivity Services, Inc's application for market-based rate authority, with an accompanying rate schedule, noting that such application includes a request for blanket authorization, under 18 CFR part 34, of future issuances of securities and assumptions of liability.

Any person desiring to intervene or to protest should file with the Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426, in accordance with Rules 211 and 214 of the Commission's Rules of Practice and Procedure (18 CFR 385.211 and 385.214). Anyone filing a motion to intervene or protest must serve a copy of that document on the Applicant.

Notice is hereby given that the deadline for filing protests with regard to the applicant's request for blanket authorization, under 18 CFR part 34, of future issuances of securities and assumptions of liability is August 10, 2009.

The Commission encourages electronic submission of protests and interventions in lieu of paper, using the FERC Online links at *http://www.ferc.gov.* To facilitate electronic service, persons with Internet access who will eFile a document and/or be listed as a contact for an intervenor must create and validate an eRegistration account using the eRegistration link. Select the eFiling link to log on and submit the intervention or protests.

Persons unable to file electronically should submit an original and 14 copies of the intervention or protest to the Federal Energy Regulatory Commission, 888 First St., NE., Washington, DC 20426.

The filings in the above-referenced proceeding(s) are accessible in the Commission's eLibrary system by clicking on the appropriate link in the above list. They are also available for review in the Commission's Public Reference Room in Washington, DC. There is an eSubscription link on the Web site that enables subscribers to receive e-mail notification when a document is added to a subscribed docket(s). For assistance with any FERC Online service, please e-mail *FERCOnlineSupport@ferc.gov.* or call (866) 208–3676 (toll free). For TTY, call (202) 502–8659.

Nathaniel J. Davis, Sr.,

Deputy Secretary.

[FR Doc. E9–17762 Filed 7–24–09; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. ER09–1453–000]

Gateway Energy Services Corporation; Supplemental Notice That Initial Market-Based Rate Filing Includes Request for Blanket Section 204 Authorization

July 20, 2009.

This is a supplemental notice in the above-referenced proceeding of Gateway Energy Services Corporation's application for market-based rate authority, with an accompanying rate tariff, noting that such application includes a request for blanket authorization, under 18 CFR part 34, of future issuances of securities and assumptions of liability.

Any person desiring to intervene or to protest should file with the Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC, 20426, in accordance with Rules 211 and 214 of the Commission's Rules of Practice and Procedure (18 CFR 385.211 and 385.214). Anyone filing a motion to intervene or protest must serve a copy of that document on the Applicant.

Notice is hereby given that the deadline for filing protests with regard to the applicant's request for blanket authorization, under 18 CFR part 34, of future issuances of securities and assumptions of liability, is August 10, 2009.

The Commission encourages electronic submission of protests and interventions in lieu of paper, using the FERC Online links at *http://www.ferc.gov.* To facilitate electronic service, persons with Internet access who will eFile a document and/or be listed as a contact for an intervenor

must create and validate an eRegistration account using the eRegistration link. Select the eFiling link to log on and submit the intervention or protests.

Persons unable to file electronically should submit an original and 14 copies of the intervention or protest to the Federal Energy Regulatory Commission, 888 First St. NE., Washington, DC, 20426.

The filings in the above-referenced proceeding are accessible in the Commission's eLibrary system by clicking on the appropriate link in the above list.

They are also available for review in the Commission's Public Reference Room in Washington, DC. There is an eSubscription link on the Web site that enables subscribers to receive e-mail notification when a document is added to a subscribed dockets(s). For assistance with any FERC Online service, please e-mail *FERCOnlineSupport@ferc.gov.* or call (866) 208–3676 (toll free). For TTY, call (202) 502–8659.

Nathaniel J. Davis, Sr.,

Deputy Secretary.

[FR Doc. E9–17761 Filed 7–24–09; 8:45 am]

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DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

Notice of FERC Staff Attendance at Southwest Power Pool Inc. Regional State Committee Meeting and Southwest Power Pool Inc. Board of Directors/Members Committee Meeting

July 20, 2009.

The Federal Energy Regulatory Commission hereby gives notice that members of its staff may attend the meeting of the Southwest Power Pool Inc. (SPP) Regional State Committee and SPP Board of Directors/Members Committee meeting, as noted below. Their attendance is part of the Commission's ongoing outreach efforts.

SPP Regional State Committee Meeting

July 27, 2009 (1 p.m.–5 p.m.) Kansas City Airport Marriott, 775 Brasilia Ave., Kansas City, Missouri 64153.

SPP Board of Directors Meeting

July 28, 2009 (8:30 a.m.–3 p.m.) Kansas City Airport Marriott, 775 Brasilia Ave., Kansas City, Missouri 64153.

The discussions may address matters at issue in the following proceedings:

Docket No. ER06–451, *Southwest Power Pool, Inc.;*
Docket No. ER08–923, *Southwest Power Pool, Inc.;*
Docket No. ER08–1307, *Southwest Power Pool, Inc.;*
Docket No. ER08–1308, *Southwest Power Pool, Inc.;*
Docket No. ER08–1357, *Southwest Power Pool, Inc.;*
Docket No. ER08–1358, *Southwest Power Pool, Inc.;*
Docket No. ER08–1419, *Southwest Power Pool, Inc.;*
Docket No. ER08–1516, *Southwest Power Pool, Inc.;*
Docket No. EL08–80, *Oklahoma Corporation Commission;*
Docket No. ER09–35, *Tallgrass Transmission LLC;*
Docket No. ER09–36, *Prairie Wind Transmission LLC;*
Docket No. ER09–149, *Southwest Power Pool, Inc.;*
Docket No. ER09–262, *Southwest Power Pool, Inc.;*
Docket No. ER09–336, *Southwest Power Pool, Inc.;*
Docket No. ER09–342, *Southwest Power Pool, Inc.;*
Docket No. ER09–443, *Southwest Power Pool, Inc.;*
Docket No. ER09–659, *Southwest Power Pool, Inc.;*
Docket No. ER09–748, *Southwest Power Pool, Inc.;*
Docket No. ER09–883, *Southwest Power Pool, Inc.;*
Docket No. ER09–1039, *Southwest Power Pool, Inc.;*
Docket No. ER09–1042, *Southwest Power Pool, Inc.;*
Docket No. ER09–1050, *Southwest Power Pool, Inc.;*
Docket No. ER09–1055, *Southwest Power Pool, Inc.;*
Docket No. ER09–1056, *Southwest Power Pool, Inc.;*
Docket No. ER09–1057, *Southwest Power Pool, Inc.;*
Docket No. ER09–1068, *Southwest Power Pool, Inc.;*
Docket No. ER09–1080, *Southwest Power Pool, Inc.;*
Docket No. ER09–1136, *Southwest Power Pool, Inc.;*
Docket No. ER09–1130, *Southwest Power Pool, Inc.;*
Docket No. ER09–1140, *Southwest Power Pool, Inc.;*
Docket No. ER09–1152, *Southwest Power Pool, Inc.;*
Docket No. ER09–1172, *Southwest Power Pool, Inc.;*
Docket No. ER09–1174, *Southwest Power Pool, Inc.;*
Docket No. ER09–1177, *Southwest Power Pool, Inc.;*
Docket No. ER09–1192, *Southwest Power Pool, Inc.;*
Docket No. ER09–1202, *Southwest Power Pool, Inc.;*
Docket No. ER09–1212, *Southwest Power Pool, Inc.;*
Docket No. ER09–1219, *Southwest Power Pool, Inc.;*
Docket No. ER09–1223, *Southwest Power Pool, Inc.;*
Docket No. ER09–1230, *Southwest Power Pool, Inc.;*
Docket No. ER09–1234, *Southwest Power Pool, Inc.;*
Docket No. ER09–1236, *Southwest Power Pool, Inc.;*
Docket No. ER09–1238, *Southwest Power Pool, Inc.;*
Docket No. ER09–1242, *Southwest Power Pool, Inc.;*
Docket No. ER09–1245, *Southwest Power Pool, Inc.;*
Docket No. ER09–1249, *Southwest Power Pool, Inc.;*
Docket No. ER09–1250, *Southwest Power Pool, Inc.;*
Docket No. ER09–1254, *Southwest Power Pool, Inc.;*
Docket No. ER09–1255, *Southwest Power Pool, Inc.;*
Docket No. ER09–1258, *Southwest Power Pool, Inc.;*
Docket No. ER09–1273, *Westar Energy, Inc.;*
Docket No. ER09–1306, *Southwest Power Pool, Inc.;*
Docket No. ER09–1338, *Southwest Power Pool, Inc.;*
Docket No. ER09–1343, *Southwest Power Pool, Inc.;*
Docket No. ER09–1352, *Southwest Power Pool, Inc.;*
Docket No. ER09–1370, *Southwest Power Pool, Inc.;*
Docket No. ER09–1380, *Southwest Power Pool, Inc.;*
Docket Nos. OA08–5 and EL09–40, *Southwest Power Pool, Inc.;*
Docket No. OA08–60, *Southwest Power Pool, Inc.;*
Docket No. OA08–61, *Southwest Power Pool, Inc.;*
Docket No. OA08–104, *Southwest Power Pool, Inc.*

These meetings are open to the public.

For more information, contact John Rogers, Office of Energy Market Regulation, Federal Energy Regulatory Commission at (202) 502–8564 or *john.rogers@ferc.gov.*

Nathaniel J. Davis, Sr.,

Deputy Secretary.

[FR Doc. E9–17760 Filed 7–24–09; 8:45 am]

BILLING CODE P

ENVIRONMENTAL PROTECTION AGENCY

[EPA–HQ–OAR–2009–0022; FRL–8935–9]

Agency Information Collection Activities; Submission to OMB for Review and Approval; Comment Request; Acid Rain Program Under Title IV of the Clean Air Act Amendments (Renewal); EPA ICR No. 1633.15, OMB Control No. 2060–0258

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice.

SUMMARY: In compliance with the Paperwork Reduction Act (PRA) (44 U.S.C. 3501 *et seq.*), this document announces that an Information Collection Request (ICR) has been forwarded to the Office of Management and Budget (OMB) for review and approval. This is a request to renew an existing approved collection. The ICR, which is abstracted below, describes the nature of the information collection and its estimated burden and cost.

DATES: Additional comments may be submitted on or before August 26, 2009.

ADDRESSES: Submit your comments, referencing Docket ID No. EPA–HQ–OAR–2009–0022, to (1) EPA online using *http://www.regulations.gov* (our preferred method), by e-mail to *a-and-r-docket@epamail.epa.gov*, or by mail to: Air and Radiation Docket and Information Center, Environmental Protection Agency, Mailcode 28221T, 1200 Pennsylvania Ave., NW., Washington, DC 20460, and (2) OMB by mail to: Office of Information and Regulatory Affairs, Office of Management and Budget (OMB), Attention: Desk Officer for EPA, 725 17th Street, NW., Washington, DC 20503.

FOR FURTHER INFORMATION CONTACT: Karen VanSickle, Clean Air Markets Division, Office of Air and Radiation, (6204J), Environmental Protection Agency, 1200 Pennsylvania Ave., NW., Washington, DC 20460; telephone number: 202–343–9220; fax number: 202–343–2361; e-mail address: *vansickle.karen@epa.gov*.

SUPPLEMENTARY INFORMATION: EPA has submitted the following ICR to OMB for review and approval according to the procedures prescribed in 5 CFR 1320.12. On April 1, 2009 (74 FR 14798), EPA sought comments on this ICR pursuant to 5 CFR 1320.8(d). EPA received one comment during the comment period, which is addressed in the ICR. Any additional comments on this ICR should be submitted to EPA and OMB within 30 days of this notice.

EPA has established a public docket for this ICR under Docket ID No. EPA–HQ–OAR–2009–0022, which is available for online viewing at *http://www.regulations.gov*, or in person viewing at the Air and Radiation Docket in the EPA Docket Center (EPA/DC), EPA West, Room 3334, 1301 Constitution Ave., NW., Washington, DC. The EPA/DC Public Reading Room is open from 8:30 a.m. to 4:30 p.m., Monday through Friday, excluding legal holidays. The telephone number for the Reading Room is 202–566–1744, and the telephone number for the Air and Radiation Docket is 202–566–1742.

Use EPA's electronic docket and comment system at *http://www.regulations.gov*, to submit or view public comments, access the index listing of the contents of the docket, and to access those documents in the docket that are available electronically. Once in the system, select ''docket search,'' then key in the docket ID number identified above. Please note that EPA's policy is that public comments, whether submitted electronically or in paper, will be made available for public viewing at *http://www.regulations.gov* as EPA receives them and without change, unless the comment contains copyrighted material, confidential business information (CBI), or other information whose public disclosure is restricted by statute. For further information about the electronic docket, go to *http://www.regulations.gov*.

Title: Acid Rain Program under Title IV of the Clean Air Act Amendments (Renewal).

ICR numbers: EPA ICR No. 1633.15, OMB Control No. 2060–0258.

ICR Status: This ICR is scheduled to expire on July 31, 2009. Under OMB regulations, the Agency may continue to conduct or sponsor the collection of information while this submission is pending at OMB. An Agency may not conduct or sponsor, and a person is not required to respond to, a collection of information, unless it displays a currently valid OMB control number. The OMB control numbers for EPA's regulations in title 40 of the CFR, after appearing in the **Federal Register** when approved, are listed in 40 CFR part 9, and are displayed either by publication in the **Federal Register** or by other appropriate means, such as on the related collection instrument or form, if applicable. The display of OMB control numbers in certain EPA regulations is consolidated in 40 CFR part 9.

Abstract: The Acid Rain Program was established under Title IV of the 1990 Clean Air Act Amendments. The program calls for major reductions of the pollutants that cause acid rain while establishing a new approach to environmental management. This information collection is necessary to implement the Acid Rain Program. It includes burden hours associated with developing and modifying permits, transferring allowances, obtaining allowances from the conservation and renewable energy reserve, monitoring emissions, participating in the annual auctions, completing annual compliance certifications, participating in the Opt-in program, and complying with NO_X permitting requirements.

Burden Statement: The annual public reporting and recordkeeping burden for this collection of information is estimated to average 90 hours per response. Burden means the total time, effort, or financial resources expended by persons to generate, maintain, retain, or disclose or provide information to or for a Federal agency. This includes the time needed to review instructions; develop, acquire, install, and utilize technology and systems for the purposes of collecting, validating, and verifying information, processing and maintaining information, and disclosing and providing information; adjust the existing ways to comply with any previously applicable instructions and requirements which have subsequently changed; train personnel to be able to respond to a collection of information; search data sources; complete and review the collection of information; and transmit or otherwise disclose the information.

Respondents/Affected Entities: Electric utilities, Industrial sources, and other persons.

Estimated Number of Respondents: 1,700.

Frequency of Response: On occasion, quarterly, and annually.

Estimated Total Annual Hour Burden: 2,056,946.

Estimated Total Annual Cost: $288,922,970, includes $150,608,009 annualized capital and O&M costs.

Changes in the Estimates: There is an increase of 85,670 hours in the total estimated burden currently identified in the OMB Inventory of Approved ICR Burdens. This increase is due to adjustments which include changes to the number of responses and the time it takes to respond to a particular activity.

Dated: July 21, 2009.

John Moses,

Director, Collection Strategies Division.

[FR Doc. E9–17831 Filed 7–24–09; 8:45 am]

BILLING CODE 6560–50–P

ENVIRONMENTAL PROTECTION AGENCY

[EPA–HQ–OECA–2008–0434; FRL–8935–4]

Agency Information Collection Activities; Submission to OMB for Review and Approval; Comment Request; NESHAP for Hydrochloric Acid Production (Renewal), EPA ICR Number 2032.06, OMB Control Number 2060–0529

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice.

SUMMARY: In compliance with the Paperwork Reduction Act (44 U.S.C. 3501 *et seq.*), this document announces that an Information Collection Request (ICR) has been forwarded to the Office of Management and Budget (OMB) for review and approval. This is a request to renew an existing approved collection. The ICR that is abstracted below describes the nature of the collection and the estimated burden and cost.

DATES: Additional comments may be submitted on or before August 26, 2009.

ADDRESSES: Submit your comments, referencing docket ID number EPA–HQ–OECA–2008–0434, to (1) EPA online using *http://www.regulations.gov* (our preferred method), or by e-mail to *docket.oeca@epa.gov*, or by mail to: EPA Docket Center (EPA/DC), Environmental Protection Agency, Enforcement and Compliance Docket and Information Center, mail code 28221T, 1200 Pennsylvania Avenue, NW., Washington, DC 20460, and (2) OMB at: Office of Information and Regulatory Affairs, Office of Management and Budget (OMB), Attention: Desk Officer for EPA, 725 17th Street, NW., Washington, DC 20503.

FOR FURTHER INFORMATION CONTACT: John Schaefer, Office of Air Quality Planning and Standards, Sector Policies and Programs Division (D243–05), Measurement Policy Group, Environmental Protection Agency, Research Triangle Park, North Carolina 27711; telephone number: (919) 541–0296; fax number: (919) 541–3207; e-mail address: *schaefer.john@epa.gov.*

SUPPLEMENTARY INFORMATION: EPA has submitted the following ICR to OMB for review and approval according to the procedures prescribed in 5 CFR 1320.12. On May 30, 2008 (73 FR 31088), EPA sought comments on this ICR pursuant to 5 CFR 1320.8(d). EPA received no comments. Any additional comments on this ICR should be submitted to EPA and OMB within 30 days of this notice.

EPA has established a public docket for this ICR under docket ID number EPA–HQ–OECA–2008–0434, which is available for public viewing online at *http://www.regulations.gov*, or in person at the Enforcement and Compliance Docket in the EPA Docket Center (EPA/DC), EPA West, Room 3334, 1301 Constitution Avenue, NW., Washington, DC. The EPA Docket Center Public Reading Room is open from 8:30 a.m. to 4:30 p.m., Monday through Friday, excluding legal holidays. The telephone number for the Reading Room is (202) 566–1744 and the telephone number for the Enforcement and Compliance Docket is (202) 566–1752.

Use EPA's electronic docket and comment system at *http://www.regulations.gov* to submit or view public comments, access the index listing of the contents of the docket, and to access those documents in the docket that are available electronically. Once in the system, select ''docket search,'' then key in the docket ID number identified above. Please note that EPA's policy is that public comments, whether submitted electronically or in paper, will be made available for public viewing at *http://www.regulations.gov*, as EPA receives them and without change, unless the comment contains copyrighted material, Confidential Business Information (CBI), or other information whose public disclosure is restricted by statute. For further information about the electronic docket, go to *http://www.regulations.gov*.

Title: NESHAP for Hydrochloric Acid Production (Renewal).

ICR Numbers: EPA ICR Number 2032.06, OMB Control Number 2060–0529.

ICR Status: This ICR is scheduled to expire on September 30, 2009. Under OMB regulations, the Agency may continue to conduct or sponsor the collection of information while this submission is pending at OMB. An Agency may not conduct or sponsor, and a person is not required to respond to, a collection of information unless it displays a currently valid OMB control number. The OMB control numbers for EPA's regulations in title 40 of the CFR, after appearing in the **Federal Register** when approved, are listed in 40 CFR part 9, and displayed either by publication in the **Federal Register** or by other appropriate means, such as on the related collection instrument or form, if applicable. The display of OMB control numbers in certain EPA regulations is consolidated in 40 CFR part 9.

Abstract: The National Emission Standards for Hazardous Air Pollutants (NESHAP) for hydrochloric acid production were proposed on September 18, 2001 (66 FR 48174), final rule on April 17, 2003 (68 FR 19076), amended on August 24, 2005 (70 FR 49530), and promulgated on April 7, 2006 (71 FR 17738). This subpart applies to each new, reconstructed, or existing affected major source at a hydrochloric acid (HCI) production facility.

In general, all NESHAP standards require one-time only initial notifications, compliance status reports, and performance tests by the owners/operators of the affected facilities. They are also required to maintain records of the occurrence and duration of any startup, shutdown, or malfunction (SSM) in the operation of an affected facility, or any period during which the monitoring system is inoperative. These notifications, reports, and records are essential in determining compliance, and are required of all affected facilities subject to NESHAP. Semiannual compliance reports are also required.

Burden Statement: The annual public reporting and recordkeeping burden for this collection of information is estimated to average 541 hours per response. Burden means the total time, effort, or financial resources expended by persons to generate, maintain, retain, or disclose or provide information either to or for a Federal agency. This includes the time needed to review instructions; develop, acquire, install, and utilize technology and systems for the purposes of collecting, validating, and verifying information, processing and maintaining information, and disclosing and providing information; adjust the existing ways to comply with any previously applicable instructions and requirements which have subsequently changed; train personnel to be able to respond to a collection of information; search data sources; complete and review the collection of information; and transmit or otherwise disclose the information.

Respondents/Affected Entities: Owners or operators of hydrochloric acid production facilities.

Estimated Number of Respondents: 75.

Frequency of Response: Initially, occasionally and semiannually.

Estimated Total Annual Hour Burden: 94,104.

Estimated Total Annual Cost: $8,647,612, including $7,959,759 in annual labor costs, $53,500 in total capital/startup costs, and $634,353 in O&M costs.

Changes in the Estimates: There is no change in the total estimated burden hours currently identified in the OMB Inventory of Approved ICR Burdens.

Dated: July 20, 2009.

John Moses,

Director, Collection Strategies Division.

[FR Doc. E9–17836 Filed 7–24–09; 8:45 am]

BILLING CODE 6560–50–P

ENVIRONMENTAL PROTECTION AGENCY

[EPA–HQ–OECA–2008–0421; FRL–8935–5]

Agency Information Collection Activities; Submission to OMB for Review and Approval; Comment Request; NESHAP for the Wood Building Products Surface Coating Industry, EPA ICR Number 2034.04, OMB Control Number 2060–0510

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice.

SUMMARY: In compliance with the Paperwork Reduction Act (44 U.S.C. 3501 *et seq.*), this document announces that an Information Collection Request (ICR) has been forwarded to the Office of Management and Budget (OMB) for review and approval. This is a request to renew an existing approved collection. The ICR that is abstracted below describes the nature of the collection and the estimated burden and cost.

DATES: Additional comments may be submitted on or before August 26, 2009.

ADDRESSES: Submit your comments, referencing docket ID number EPA–HQ–OECA–2008–0421, to (1) EPA online using *http://www.regulations.gov* (our preferred method), or by e-mail to *docket.oeca@epa.gov,* or by mail to: EPA Docket Center (EPA/DC), Environmental Protection Agency, Enforcement and Compliance Docket and Information Center, mail code 2201T, 1200 Pennsylvania Avenue, NW., Washington, DC 20460, and (2) OMB at: Office of Information and Regulatory Affairs, Office of Management and Budget (OMB), Attention: Desk Officer for EPA, 725 17th Street, NW., Washington, DC 20503.

FOR FURTHER INFORMATION CONTACT: John Schaefer, Office of Air Quality Planning and Standards, Sector Policies and Programs Division (D243–05), Measurement Policy Group, Environmental Protection Agency, Research Triangle Park, North Carolina, 27711; telephone number: (919) 541–0296; fax number: (919) 541–3207; e-mail address: *schaefer.john@epa.gov.*

SUPPLEMENTARY INFORMATION: EPA has submitted the following ICR to OMB for review and approval according to the procedures prescribed in 5 CFR 1320.12. On May 30, 2008 (73 FR 31088), EPA sought comments on this ICR pursuant to 5 CFR 1320.8(d). EPA received no comments. Any additional comments on this ICR should be submitted to EPA and OMB within 30 days of this notice.

EPA has established a public docket for this ICR under docket ID number EPA–HQ–OECA–2008–0421, which is available for public viewing online at *http://www.regulations.gov,* or in person viewing at the Enforcement and Compliance Docket in the EPA Docket Center (EPA/DC), EPA West, Room 3334, 1301 Constitution Avenue, NW., Washington, DC. The EPA Docket Center Public Reading Room is open from 8:30 a.m. to 4:30 p.m., Monday through Friday, excluding legal holidays. The telephone number for the Reading Room is (202) 566–1744 and the telephone number for the Enforcement and Compliance Docket is (202) 566–1752.

Use EPA's electronic docket and comment system at *http://www.regulations.gov* to submit or view public comments, access the index listing of the contents of the docket, and to access those documents in the docket that are available electronically. Once in the system, select ''docket search,'' then key in the docket ID number identified above. Please note that EPA's policy is that public comments, whether submitted electronically or in paper, will be made available for public viewing at *http://www.regulations.gov,* as EPA receives them and without change, unless the comment contains copyrighted material, Confidential Business Information (CBI), or other information whose public disclosure is restricted by statute. For further information about the electronic docket, go to *http://www.regulations.gov.*

Title: NESHAP for the Wood Building Products Surface Coating Industry (Renewal).

ICR Numbers: EPA ICR Number 2034.04, OMB Control Number 2060–0510.

ICR Status: This ICR is scheduled to expire on September 30, 2009. Under OMB regulations, the Agency may continue to conduct or sponsor the collection of information while this submission is pending at OMB. An Agency may not conduct or sponsor, and a person is not required to respond to, a collection of information unless it displays a currently valid OMB control number. The OMB control numbers for EPA's regulations in title 40 of the CFR, after appearing in the **Federal Register** when approved, are listed in 40 CFR part 9, and displayed either by publication in the **Federal Register** or by other appropriate means, such as on the related collection instrument or form, if applicable. The display of OMB control numbers in certain EPA regulations is consolidated in 40 CFR part 9.

Abstract: The National Emission Standards for Hazardous Air Pollutants (NESHAP), for the Wood Building Products Surface Coating Industry, published at 40 CFR part 63, subpart QQQQ, were proposed on June 21, 2002, and promulgated on May 28, 2003. These regulations apply to existing facilities and new facilities that perform surface coating of wood building products where the total Hazardous Air Pollutants (HAPs) emitted are greater than or equal to 10 tons per year of any one HAP, or where the total HAPs emitted are greater than or equal to 25 tons per year of any combination of HAPs, that use at least 4,170 liters (1,100 gallons) of coatings annually.

In general, all NESHAP standards require initial notifications, performance tests, and periodic reports by the owners/operators of the affected facilities. They are also required to maintain records of the occurrence and duration of any startup, shutdown, or malfunction in the operation of an affected facility, or any period during which the monitoring system is inoperative. These notifications, reports, and records are essential in determining compliance, and are required of all affected facilities subject to NESHAP.

Burden Statement: The annual public reporting and recordkeeping burden for this collection of information is estimated to average 109 hours per response. Burden means the total time, effort, or financial resources expended by persons to generate, maintain, retain, or disclose or provide information to or for a Federal agency. This includes the time needed to review instructions; develop, acquire, install, and utilize technology and systems for the purposes of collecting, validating, and verifying information, processing and maintaining information, and disclosing and providing information; adjust the existing ways to comply with any previously applicable instructions and requirements which have subsequently changed; train personnel to be able to respond to a collection of information; search data sources; complete and review the collection of information; and transmit or otherwise disclose the information.

Respondents/Affected Entities: Wood building products surface coating facilities.

Estimated Number of Respondents: 232.

Frequency of Response: Initially, occasionally, and semiannually.

Estimated Total Annual Hour Burden: 75,771

Estimated Total Annual Cost: $6,695,925, which includes $6,417,525 in annual labor costs, $278,400 in O&M costs, and no total capital/Startup costs.

Changes in the Estimates: There is a small change in the total estimated burden currently identified in the OMB Inventory of Approved ICR Burdens. This change is due to a correction in rounding of the currently approved burden. The new burden is $278,400, or $400 in additional burden above the currently approved burden.

Dated: July 20, 2009.

John Moses,

Director, Collection Strategies Division.

[FR Doc. E9–17837 Filed 7–24–09; 8:45 am]

BILLING CODE 6560–50–P

FEDERAL COMMUNICATIONS COMMISSION

Notice of Public Information Collection(s) Being Reviewed by the Federal Communications Commission, Comments Requested

July 21, 2009.

SUMMARY: As part of its continuing effort to reduce paperwork burden and as required by the Paperwork Reduction Act (PRA) of 1995 (*44 U.S.C. 3501–3520*), the Federal Communications Commission invites the general public and other Federal agencies to comment on the following information collection(s). Comments are requested concerning (a) Whether the proposed collection of information is necessary for the proper performance of the functions of the Commission, including whether the information shall have practical utility; (b) the accuracy of the Commission's burden estimate; (c) ways to enhance the quality, utility, and clarity of the information collected; and (d) ways to minimize the burden of the collection of information on the respondents, including the use of automated collection techniques or other forms of information technology. An agency may not conduct or sponsor a collection of information unless it displays a currently valid OMB control number. No person shall be subject to any penalty for failing to comply with a collection of information subject to the Paperwork Reduction Act that does not display a valid OMB control number.

DATES: Written PRA comments should be submitted on or before August 26, 2009. If you anticipate that you will be submitting comments, but find it difficult to do so within the period of time allowed by this notice, you should advise the contact listed below as soon as possible.

ADDRESSES: Direct all PRA comments to Nicholas A. Fraser, Office of Management and Budget, via Internet at *Nicholas_A._Fraser@omb.eop.gov* or via fax at (202) 395–5167 and to Cathy Williams, Federal Communications Commission, Room 1–C823, 445 12th Street, SW., Washington, DC or via Internet at *Cathy.Williams @fcc.gov* or *PRA@fcc.gov.* To view a copy of this information collection request (ICR) submitted to OMB: (1) Go to the Web page *http://www.reginfo.gov/public/do/PRAMain,* (2) look for the section of the Web page called ''Currently Under Review,'' (3) click on the downward-pointing arrow in the ''Select Agency'' box below the ''Currently Under Review'' heading, (4) select ''Federal Communications Commission'' from the list of agencies presented in the ''Select Agency'' box, (5) click the ''Submit'' button to the right of the ''Select Agency'' box, (6) when the list of FCC ICRs currently under review appears, look for the title of this ICR (or its OMB control number, if there is one) and then click on the ICR Reference Number to view detailed information about this ICR.''

FOR FURTHER INFORMATION CONTACT: For additional information about the information collection(s), contact Cathy Williams at (202) 418–2918 or send an e-mail to *PRA@fcc.gov* and/or *Cathy.Williams@fcc.gov.*

SUPPLEMENTARY INFORMATION:

OMB Control Number: 3060–0029.

Title: Application for DTV Broadcast Station License, FCC Form 302–DTV; Application for Construction Permit for Reserved Channel Noncommercial Educational Broadcast Station, FCC Form 340; Application for Authority to Construct or Make Changes in an FM Translator or FM Booster Station, FCC Form 349.

Form Number: 302–DTV, 340 and 349.

Type of Review: Revision of a currently approved collection.

Respondents: Business or other for-profit entities; not-for-profit institutions.

Number of Respondents and Responses: 4,770 respondents; 4,770 responses.

Estimated Time per Response: 1 hour to 4 hours.

Frequency of Response: On occasion reporting requirement; third party disclosure requirement.

Total Annual Burden: 10,280 hours.

Total Annual Cost: $18,584,697.

Obligation to Respond: Required to obtain or retain benefits. The statutory authority is contained in sections 154(i), 303 and 308 of the Communications Act of 1934, as amended.

Nature and Extent of Confidentiality: There is no need for confidentiality with this collection of information.

Privacy Impact Assessment: No impact(s).

Needs and Uses: The Commission received OMB approval on December 29, 2008 under the emergency process procedures for a period of six months for the changes to FCC Form 340 that were necessary to accommodate applications by a DTV station for a DTS facility. The Commission now is requesting OMB approval for a period of three years for the requirements and changes to FCC Form 340.

In addition, the Commission is revising this information collection to eliminate the requirements that are no longer necessary because of the completion of the DTV transition on June 12, 2009. In particular, collections relating to the filing of applications for construction permits and broadcast licenses for analog TV stations are discontinued now that all full-power TV stations will broadcast only in digital. Therefore, with this submission the Commission is discontinuing FCC Form 302–TV now that all full-power TV stations will broadcast only in digital. The associated burdens and costs related to FCC Form 302–TV are removed from this collection.

Form 302–DTV is used by licensees and permittees of Digital TV (''DTV'') broadcast stations to obtain a new or modified station license and/or to notify the Commission of certain changes in the licensed facilities of those stations. It may be used: (1) To cover an authorized construction permit (or auxiliary antenna), provided that the facilities have been constructed in compliance with the provisions and conditions specified on the construction permit; or (2) To implement modifications to existing licenses as permitted by 47 C.F.R. Sections 73.1675(c) or 73.1690(c).

FCC Form 340 is used by licensees and permittees to apply for authority to construct a new noncommercial educational (''NCE'') FM and DTV broadcast station (including a DTS facility), or to make changes in the existing facilities of such a station. The FCC Form 340 is only used if the station will operate on a channel that is reserved exclusively for NCE use, or in the situation where applications for NCE stations on non-reserved channels are mutually exclusive only with one another.

Form 340's Newspaper Notice (third party disclosure) requirement; 47 CFR 73.3580. Form 340 also contains a third

party disclosure requirement, pursuant to § 73.3580. This rule requires stations applying for a new broadcast station, or to make major changes to an existing station, to give local public notice of this filing in a newspaper of general circulation in the community in which the station is located. This local public notice must be completed within 30 days of the tendering of the application. This notice must be published at least twice a week for two consecutive weeks in a three-week period. In addition, a copy of this notice must be placed in the station's public inspection file along with the application, pursuant to Section 73.3527. This recordkeeping information collection requirement is contained in OMB Control No. 3060–0214, which covers Section 73.3527.

FCC Form 349 is used to apply for authority to construct a new FM translator or FM booster broadcast station, or to make changes in the existing facilities of such stations.

Form 349's Newspaper Notice (third party disclosure) requirement; 47 CFR 73.3580. Form 349 also contains a third party disclosure requirement, pursuant to § 73.3580. This rule requires stations applying for a new broadcast station, or to make major changes to an existing station, to give local public notice of this filing in a newspaper of general circulation in the community in which the station is located. This local public notice must be completed within 30 days of the tendering of the application. This notice must be published at least twice a week for two consecutive weeks in a three-week period. In addition, a copy of this notice must be placed in the station's public inspection file along with the application, pursuant to § 73.3527. This recordkeeping information collection requirement is contained in OMB Control No. 3060–0214, which covers § 73.3527.

Federal Communications Commission.

Marlene H. Dortch,

Secretary.

[FR Doc. E9–17815 Filed 7–24–09; 8:45 am]

BILLING CODE 6712–01–P

FEDERAL COMMUNICATIONS COMMISSION

Notice of Public Information Collection(s) Approved by the Office of Management and Budget

July 21, 2009.

SUMMARY: The Federal Communications Commission has received Office of Management and Budget (OMB) approval for the following public information collection(s) pursuant to the Paperwork Reduction Act of 1995 (44 U.S.C. 3501–3520). An agency may not conduct or sponsor a collection of information unless it displays a currently valid OMB control number, and no person is required to respond to a collection of information unless it displays a currently valid OMB control number. Comments concerning the accuracy of the burden estimate(s) and any suggestions for reducing the burden should be directed to the person listed in the **FOR FURTHER INFORMATION CONTACT** section below.

FOR FURTHER INFORMATION CONTACT: For additional information or copies of the information collection(s), contact Cathy Williams at (202) 418–2918.

SUPPLEMENTARY INFORMATION:

OMB Control Number: 3060–0751.

OMB Approval Date: December 12, 2008.

Expiration Date: December 31, 2011.

Title: Section 43.51, Reports Concerning International Private Lines Interconnected to the U.S. Public Switched Network.

Form Number: Not Applicable.

Estimated Annual Burden: 40 responses; 6–8 hours per response; 300 hours total per year.

Annual Cost Burden: None.

Obligation to Respond: Required to obtain or retain benefits. The statutory authority for this collection of information is contained in 47 U.S.C. 154, 211, 219 and 220.

Nature and Extent of Confidentiality: There is no need for confidentiality.

Needs and Uses: The Commission has determined that the authorized resale of international private lines interconnected to the U.S. public switched network would tend to divert international message telephone service (IMTS) traffic from the settlements process and increase the U.S. net settlements deficit. The information will be used by the Commission in reviewing the impact, if any, that end-user private line interconnections have on the Commission's international settlements policy. The data will also enhance the ability of both the Commission and interested parties to monitor the unauthorized resale of international private lines that are interconnected to the U.S. public switched network.

OMB Control Number: 3060–0768.

OMB Approval Date: January 30, 2009.

Expiration Date: December 31, 2011.

Title: 28 GHz Band.

Form Number: Not Applicable.

Estimated Annual Burden: 65 responses; 2 hours per response; 130 hours total per year.

Annual Cost Burden: $13,200.

Obligation to Respond: Required to obtain or retain benefits. The statutory authority for this collection of information is contained in 47 U.S.C. 154 and 303(r).

Nature and Extent of Confidentiality: There is no need for confidentiality.

Needs and Uses: Applicants and licensees are required to provide the requested information to the Commission and other third parties whenever they seek authority to provide service in the 28 GHz band. If this information is compiled less frequently or not filed in conjunction with the Commission's rules, applicants and licensees will not obtain the authorization necessary to provide telecommunications services. Furthermore, the Commission would not be able to carry out its mandate as required by statute.

OMB Control Number: 3060–1035.

OMB Approval Date: February 13, 2009.

Expiration Date: January 31, 2012.

Title: Part 73, subpart F, International Broadcast Stations.

Form Number: FCC Forms 309, 310 and 311.

Estimated Annual Burden: 225 responses; 2–720 hours per response; 20,096 hours total per year.

Annual Cost Burden: $72,575.

Obligation to Respond: Required to obtain or retain benefits. The statutory authority for this collection of information is contained in 47 U.S.C. 154, 303, 307, 334, 336 and 554.

Nature and Extent of Confidentiality: There is no need for confidentiality.

Needs and Uses: This information collection is used by the Commission to assign frequencies for use by international broadcast stations, to grant authority to operate such stations and to determine if interference or adverse propagation conditions exist that may impact the operation of such stations. The Commission collects this information pursuant to 47 CFR part 73, subpart F. If the Commission did not collect this information, it would not be in a position to effectively coordinate spectrum for international broadcasters or to act for entities in times of frequency interference or adverse propagation conditions.

OMB Control Number: 3060–0686.

OMB Approval Date: March 23, 2009.

Expiration Date: March 31, 2012.

Title: International section 214 Process and Tariff Requirements—47 CFR 63.10, 63.11, 63.13, 63.18, 63.19, 63.21, 63.24, 63.25 and 1.1311.

Form Number: FCC Forms 214TC, FCC Form 214, FCC Form 214STA.

Estimated Annual Burden: 9,892 responses; 1–16 hours per response; 33,486 hours total per year.

Annual Cost Burden: $2,522,590.

Obligation To Respond: Required to obtain or retain benefits. The statutory authority for this information collection is contained in sections 1, 4(i), 4(j) 11, 201–205, 211, 214, 219, 220, 303(r), 309, 310 and 403 of the Communications Act of 1934, as amended, 47 U.S.C. 151, 154(i), 154(j), 161, 201–205, 21, 214, 219, 220, 303(r), 309 and 403, and sections 34–39.

Nature and Extent of Confidentiality: There is no need for confidentiality.

Needs and Uses: The collection of information is used by the Commission staff in carrying out its duties under the Communications Act. The information collections pertaining to part 1 of the rules are necessary to determine whether the Commission should grant a license for proposed submarine cables landing in the United States. Pursuant to *Executive Order No. 10530,* the Commission has been delegated the President's authority under the Cable Landing License Act to grant cable landing licenses, provided that the Commission obtains the approval from the State Department and seeks advice from other government agencies as appropriate. The information collections pertaining to part 63 are necessary largely to determine the qualifications of applicants to provide common carrier international telecommunications service, including applicants that are affiliated with foreign carriers, and to determine whether and under what conditions the authorizations are in the public interest, convenience, and necessity.

OMB Control Number: 3060–0944.

OMB Approval Date: February 27, 2009.

Expiration Date: February 29, 2012.

Title: Cable Landing License Act—47 CFR 1.767; 1.768; Executive Order 10530.

Form Number: FCC Form 220.

Estimated Annual Burden: 246 responses; 1–8 hours per response; 516 hours total per year.

Annual Cost Burden: $240,945.

Obligation To Respond: Required to obtain or retain benefits. The statutory authority for this information collection is contained in the Submarine Cable Landing License Act of 1921, Executive Order 10530, 47 U.S.C. 34–39, 151, 154(i), 154(j), 155, 225, 303(r), 309 and 325(e).

Nature and Extent of Confidentiality: There is no need for confidentiality.

Needs and Uses: The information will be used by the Commission staff in carrying out its duties under the Cable Landing License Act and the Coastal Zone Management Act of 1972. The information collections pertaining to part 1 of the rules are necessary to determine whether the Commission should grant a license for proposed submarine cables landing in the United States. Pursuant to *Executive Order No. 10530,* the Commission has been delegated the President's authority under the Cable Landing License Act to grant cable landing licenses, provided that the Commission must obtain the approval of the State Department and seek advice from other government agencies as appropriate.

OMB Control Number: 3060–1014.

OMB Approval Date: February 20, 2009.

Expiration Date: February 29, 2012.

Title: Section 25.146(l), Ku-Band NGSO FSS.

Form Number: Not Applicable.

Estimated Annual Burden: 1 response; 2 hours per response; 2 total annual burden hours.

Annual Cost Burden: None.

Obligation to Respond: Required to obtain or retain benefits. The statutory authority for this information collection is contained in sections 1, 4(i), 301, 303, 308, 309, and 310 of the Communications Act of 1934, as amended, 47 U.S.C. 151, 154(i), 301, 303, 308, 309, and 310.

Nature and Extent of Confidentiality: There is no need for confidentiality.

Needs and Uses: The information collection requirements (annual filings by licensees of reports on the status of their space station construction and launch) accounted for in this collection are necessary to ensure that prospective licensees in the Non-geostationary (NGSO) Fixed Satellite Service (FSS) follow their service rules.

OMB Control Number: 3060–1095.

OMB Approval Date: March 24, 2009.

Expiration Date: March 31, 2012.

Title: Surrenders of Authorizations for International Carrier, Space Station and Earth Station Licensees.

Form Number: Not Applicable.

Estimated Annual Burden: 306 responses; 1 hour per response; 306 total hours per year.

Annual Cost Burden: None.

Obligation to Respond: Voluntary. The statutory authority for this information collection is contained in sections 4(i), 7(a), 11, 303(c), 303(f), 303(g), and 303(r) of the Communications Act of 1934, as amended; 47 U.S.C. section 154(i), 157(a), 161, 303(c), 303(f), 303(g), and 303(r).

Nature and Extent of Confidentiality: There is no need for confidentiality.

Needs and Uses: Licensees file surrenders of authorizations with the Commission on a voluntary basis. This information is used by Commission staff to issue Public Notices to announce the surrenders of authorization to the general public. The Commission's release of Public Notices is critical to keeping the general public abreast of the licensees' discontinuance of telecommunications services. Without this collection of information, licensees would be required to submit surrenders of authorizations to the Commission by letter which is more time consuming than submitting such requests to the Commission electronically. In addition, Commission staff would spend an extensive amount of time processing surrenders of authorizations received by letter. The collection of information saves time for both licensees and Commission staff since they are received in MyIBFS electronically and include only the information that is essential to process the requests in a timely manner. Furthermore, the E-filing module expedites the Commission staff's announcement of surrenders of authorizations via Public Notice.

Federal Communications Commission.

Marlene H. Dortch,

Secretary.

[FR Doc. E9–17830 Filed 7–24–09; 8:45 am]

BILLING CODE 6712–01–P

FEDERAL COMMUNICATIONS COMMISSION

[Report No. 2892]

Petitions for Reconsideration of Action in Rulemaking Proceeding

July 15, 2009.

Petitions for Reconsideration have been filed in the Commission's Rulemaking proceeding listed in this Public Notice and published pursuant to 47 CFR 1.429(e). The full text of these documents is available for viewing and copying in Room CY–B402, 445 12th Street, SW., Washington, DC or may be purchased from the Commission's copy contractor, Best Copy and Printing, Inc. (BCPI) (1–800–378–3160). Oppositions to these petitions must be filed by August 11, 2009. See Section 1.4(b)(1) of the Commission's rules (47 CFR 1.4(b)(1)). Replies to oppositions must be filed within 10 days after the time for filing oppositions have expired.

Subject: In the Matter of Investigation of the Spectrum Requirements for Advanced Medical Technologies (ET Docket No. 06–135).

Number of Petitions Filed: 1.

Subject: In the Matter of Promoting Diversification of Ownership in the

Broadcasting Services (MB Docket No. 07–294).

2006 Quadrennial Regulatory Review—Review of the Commission's Broadcast Ownership Rules and other Rules Adopted Pursuant to Section 202 of the Telecommunications Act of 1996 (MB Docket No. 06–121).

2002 Biennial Regulatory Review—Review of the Commission's Broadcast Ownership Rules and other Rules Adopted Pursuant to Section 202 of the Telecommunications Act of 1996 (MB Docket No. 02–277).

Cross Ownership of Broadcast Stations and Newspapers (MM Docket No. 01–235).

Rules and Policies concerning Multiple Ownership of Radio Broadcast Stations in Local Markets (MM Docket No. 01–317).

Definition of Radio Markets (MM Docket No. 00–244).

Ways to Further Section 257 Mandate and To Build on Earlier Studies (MB Docket No. 04–228).

Number of Petitions Filed: 1.

Marlene H. Dortch,

Secretary.

[FR Doc. E9–17814 Filed 7–24–09; 8:45 am]

BILLING CODE 6712–01–P

FEDERAL RESERVE SYSTEM

Federal Open Market Committee; Domestic Policy Directive of June 23 and 24, 2009

In accordance with § 271.25 of its rules regarding availability of information (12 CFR part 271), there is set forth below the domestic policy directive issued by the Federal Open Market Committee at its meeting held on June 23 and 24, 2009.[1]

The Federal Open Market Committee seeks monetary and financial conditions that will foster price stability and promote sustainable growth in output. To further its long–run objectives, the Committee seeks conditions in reserve markets consistent with federal funds trading in a range of 0 to ¼ percent. The Committee directs the Desk to purchase agency debt, agency MBS, and longer–term Treasury securities during the intermeeting period with the aim of providing support to private credit markets and economic activity. The timing and pace of these purchases should depend on conditions in the markets for such securities and on a broader assessment of private credit market conditions. The Committee anticipates that the combination of outright purchases and various liquidity facilities outstanding will cause the size of the Federal Reserve's balance sheet to expand significantly in coming months. The Desk is expected to purchase up to $200 billion in housing–related agency debt by the end of this year. The Desk is expected to purchase up to $1.25 trillion of agency MBS by the end of the year. The Desk is expected to purchase up to $300 billion of longer–term Treasury securities by the end of the third quarter. The System Open Market Account Manager and the Secretary will keep the Committee informed of ongoing developments regarding the System's balance sheet that could affect the attainment over time of the Committee's objectives of maximum employment and price stability.

By order of the Federal Open Market Committee, July 17, 2009.

Brian F. Madigan,

Secretary, Federal Open Market Committee.

[FR Doc. E9–17754 Filed 7–24–09; 8:45 am]

BILLING CODE 6210–01–S

[1] Copies of the Minutes of the Federal Open Market Committee at its meeting held on June 23 and 24, 2009, which includes the domestic policy directive issued at the meeting, are available upon request to the Board of Governors of the Federal Reserve System, Washington, D.C. 20551. The minutes are published in the Federal Reserve Bulletin and in the Board's annual report.

FEDERAL TRADE COMMISSION

[File No. 092 3010]

Enhanced Vision Systems, Inc.; Analysis of Proposed Consent Order to Aid Public Comment

AGENCY: Federal Trade Commission.

ACTION: Proposed Consent Agreement.

SUMMARY: The consent agreement in this matter settles alleged violations of federal law prohibiting unfair or deceptive acts or practices or unfair methods of competition. The attached Analysis to Aid Public Comment describes both the allegations in the complaint and the terms of the consent order — embodied in the consent agreement — that would settle these allegations.

DATES: Comments must be received on or before August 18, 2009.

ADDRESSES: Interested parties are invited to submit written comments electronically or in paper form. Comments should refer to ''Enhanced Vision Systems, File No. 092-3010'' to facilitate the organization of comments. Please note that your comment — including your name and your state — will be placed on the public record of this proceeding, including on the publicly accessible FTC website, at (*http://www.ftc.gov/os/publiccomments.shtm*).

Because comments will be made public, they should not include any sensitive personal information, such as an individual's Social Security Number; date of birth; driver's license number or other state identification number, or foreign country equivalent; passport number; financial account number; or credit or debit card number. Comments also should not include any sensitive health information, such as medical records or other individually identifiable health information. In addition, comments should not include any ''[t]rade secret or any commercial or financial information which is obtained from any person and which is privileged or confidential. . . .,'' as provided in Section 6(f) of the FTC Act, 15 U.S.C. 46(f), and Commission Rule 4.10(a)(2), 16 CFR 4.10(a)(2). Comments containing material for which confidential treatment is requested must be filed in paper form, must be clearly labeled ''Confidential,'' and must comply with FTC Rule 4.9(c).[1]

Because paper mail addressed to the FTC is subject to delay due to heightened security screening, please consider submitting your comments in electronic form. Comments filed in electronic form should be submitted by using the following weblink: (*https://secure.commentworks.com/ftc-EnhancedVisionSystems*) (and following the instructions on the web-based form). To ensure that the Commission considers an electronic comment, you must file it on the web-based form at the weblink: (*https://secure.commentworks.com/ftc-EnhancedVisionSystems*). If this Notice appears at (*http://www.regulations.gov/search/index.jsp*), you may also file an electronic comment through that website. The Commission will consider all comments that regulations.gov forwards to it. You may also visit the FTC website at (*http://www.ftc.gov/*) to read the Notice and the news release describing it.

A comment filed in paper form should include the ''Enhanced Vision Systems, File No. 092-3010 reference both in the text and on the envelope, and should be mailed or delivered to the following address: Federal Trade Commission, Office of the Secretary,

[1] The comment must be accompanied by an explicit request for confidential treatment, including the factual and legal basis for the request, and must identify the specific portions of the comment to be withheld from the public record. The request will be granted or denied by the Commission's General Counsel, consistent with applicable law and the public interest. *See* FTC Rule 4.9(c), 16 CFR 4.9(c).

Room H-135, 600 Pennsylvania Avenue, NW, Washington, DC 20580. The FTC is requesting that any comment filed in paper form be sent by courier or overnight service, if possible, because U.S. postal mail in the Washington area and at the Commission is subject to delay due to heightened security precautions.

The Federal Trade Commission Act (''FTC Act'') and other laws the Commission administers permit the collection of public comments to consider and use in this proceeding as appropriate. The Commission will consider all timely and responsive public comments that it receives, whether filed in paper or electronic form. Comments received will be available to the public on the FTC website, to the extent practicable, at (*http://www.ftc.gov/os/publiccomments.shtm*). As a matter of discretion, the Commission makes every effort to remove home contact information for individuals from the public comments it receives before placing those comments on the FTC website. More information, including routine uses permitted by the Privacy Act, may be found in the FTC's privacy policy, at (*http://www.ftc.gov/ftc/privacy.shtm*).

FOR FURTHER INFORMATION CONTACT: Laura Schneider, Bureau of Consumer Protection, 600 Pennsylvania Avenue, NW, Washington, D.C. 20580, (202) 326-2604.

SUPPLEMENTARY INFORMATION: Pursuant to section 6(f) of the Federal Trade Commission Act, 38 Stat. 721, 15 U.S.C. 46(f), and § 2.34 the Commission Rules of Practice, 16 CFR 2.34, notice is hereby given that the above-captioned consent agreement containing a consent order to cease and desist, having been filed with and accepted, subject to final approval, by the Commission, has been placed on the public record for a period of thirty (30) days. The following Analysis to Aid Public Comment describes the terms of the consent agreement, and the allegations in the complaint. An electronic copy of the full text of the consent agreement package can be obtained from the FTC Home Page (for July 20, 2009), on the World Wide Web, at (*http://www.ftc.gov/opa/2009/07/evs.shtm*). A paper copy can be obtained from the FTC Public Reference Room, Room 130-H, 600 Pennsylvania Avenue, NW, Washington, D.C. 20580, either in person or by calling (202) 326-2222.

Public comments are invited, and may be filed with the Commission in either paper or electronic form. All comments should be filed as prescribed in the **ADDRESSES** section above, and must be received on or before the date specified in the **DATES** section.

Analysis of Agreement Containing Consent Order to Aid Public Comment

The Federal Trade Commission (''FTC'' or ''Commission'') has accepted, subject to final approval, an agreement containing a consent order from Enhanced Vision Systems, Inc., a corporation (''respondent'').

The proposed consent order has been placed on the public record for thirty (30) days for reception of comments by interested persons. Comments received during this period will become part of the public record. After thirty (30) days, the Commission will again review the agreement and the comments received and will decide whether it should withdraw from the agreement or make final the agreement's proposed order.

This matter involves respondent's marketing and sale of vision enhancement products purportedly ''Made in the U.S.A.''According to the FTC complaint, respondent represented that certain of its vision enhancement products were made in the United States, when, in fact, a significant portion of their components are of foreign origin. *See* Enforcement Policy Statement on U.S. Origin Claims (1997) (''A product that is all or virtually all made in the United States will ordinarily be one in which all significant parts and processing that go into the product are of U.S. origin.''). Thus, the complaint alleges that respondent's claim is false or misleading in violation of Section 5(a) of the FTC Act.

The proposed consent order contains a provision designed to prevent respondent from engaging in similar acts and practices in the future. Part I of the proposed order prohibits respondent from representing the extent to which its vision-related products are made in the United States unless the representation is true and not misleading. Parts II through V require respondent to keep copies of advertisements and materials relied upon in disseminating any representation covered by the order; to provide copies of the order to certain of its personnel, agents, and representatives having responsibilities with respect to the subject matter of the order; to notify the Commission of changes in corporate structure that might affect compliance obligations under the order; and to file compliance reports with the Commission and respond to other requests from FTC staff. Part VI provides that the order will terminate after twenty (20) years under certain circumstances.

The purpose of this analysis is to facilitate public comment on the proposed order. It is not intended to constitute an official interpretation of the agreement and proposed order or to modify in any way their terms.

By direction of the Commission.

Donald S. Clark

Secretary

[FR Doc. E9–17755 Filed 7–24–09: 2:25 pm]

BILLING CODE 6750–01–S

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Administration for Children and Families

Submission for OMB Review; Comment Request

Title: Request for Assistance for Child Victims of Human Trafficking.

OMB No.: 0970–0362.

Description: The William Wilberforce Trafficking Victims Protection Reauthorization Act (TVPRA) of 2008, Public Law 110–457, directs the U.S. Secretary of Health and Human Service (HHS), upon receipt of credible information that a non-U.S. citizen (alien) child may have been subjected to a severe form of trafficking in persons and is seeking Federal assistance available to victims of trafficking, to promptly determine if the child is eligible for interim assistance. The law further directs the Secretary of HHS to determine if a child receiving interim assistance is eligible for assistance as a victim of a severe form of trafficking in persons after consultation with the Attorney General, the Secretary of Homeland Security, and nongovernmental organizations with expertise on victims of severe form of trafficking.

In developing procedures for collecting the necessary information from potential child victims of trafficking, their case managers, attorneys, or other representatives to allow HHS to grant interim eligibility, HHS devised a form. HHS has determined that the use of a standard form to collect information is the best way to ensure requestors are notified of their option to request assistance for child victims of trafficking and to make prompt and consistent determinations about the child's eligibility for assistance.

Specifically, the form asks the requestor for his/her identifying information, for information on the

child, information describing the type of trafficking and circumstances surrounding the situation, and the strengths and needs of the child. The form also asks the requestor to verify the information contained in the form because the information could be the basis for a determination of an alien child's eligibility for federally funded benefits. Finally, the form takes into consideration the need to compile information regarding a child's circumstances and experiences in a non-directive, child-friendly way, and assists the potential requestor in assessing whether the child may have been subjected to trafficking in persons.

The information provided through the completion of a Request for Assistance for Child Victims of Human Trafficking form will enable HHS to make prompt determinations regarding the eligibility of an alien child for interim assistance, inform HHS' determination regarding the child's eligibility for assistance as a victim of a severe form of trafficking in persons, facilitate the required consultation process, and enable HHS to assess and address potential child protection issues.

Respondents: Representatives of governmental and nongovernmental entities providing social, legal, or protective services to non-U.S. citizen (alien) individuals under the age of 18 (children) in the United States who may have been subjected to severe forms of trafficking in persons.

ANNUAL BURDEN ESTIMATES

Instrument	Number of respondents	Number of responses per respondent	Average burden hours per response	Total burden hours
Request for Assistance for Child Victims of Human Trafficking	50	1	1	50

Estimated Total Annual Burden Hours: 50

Additional Information: Copies of the proposed collection may be obtained by writing to the Administration for Children and Families, Office of Administration, Office of Information Services, 370 L'Enfant Promenade, SW., Washington, DC 20447, Attn: ACF Reports Clearance Officer. All requests should be identified by the title of the information collection. E-mail address: *infocollection@acf.hhs.gov.*

OMB Comment: OMB is required to make a decision concerning the collection of information between 30 and 60 days after publication of this document in the **Federal Register**. Therefore, a comment is best assured of having its full effect if OMB receives it within 30 days of publication. Written comments and recommendations for the proposed information collection should be sent directly to the following: Office of Management and Budget, Paperwork Reduction Project, Fax: 202–395–7245, Attn: Desk Officer for the Administration for Children and Families.

Dated: July 22, 2009.

Janean Chambers,

Reports Clearance Officer.

[FR Doc. E9–17816 Filed 7–24–09; 8:45 am]

BILLING CODE 4184–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Centers for Disease Control and Prevention

[60Day–09–0469]

Proposed Data Collections Submitted for Public Comment and Recommendations

In compliance with the requirement of Section 3506(c)(2)(A) of the Paperwork Reduction Act of 1995 for opportunity for public comment on proposed data collection projects, the Centers for Disease Control and Prevention (CDC) will publish periodic summaries of proposed projects. To request more information on the proposed projects or to obtain a copy of the data collection plans and instruments, call 404–639–5960 or send comments to Maryam I. Daneshvar, CDC Acting Reports Clearance Officer, 1600 Clifton Road, MS D–74, Atlanta, GA 30333 or send an email to *omb@cdc.gov.*

Comments are invited on: (a) Whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information shall have practical utility; (b) the accuracy of the agency's estimate of the burden of the proposed collection of information; (c) ways to enhance the quality, utility, and clarity of the information to be collected; and (d) ways to minimize the burden of the collection of information on respondents, including through the use of automated collection techniques or other forms of information technology. Written comments should be received within 60 days of this notice.

Proposed Project

National Program of Cancer Registries Cancer Surveillance System—Revision—National Center for Chronic Disease Prevention and Health Promotion (NCCDPHP), Centers for Disease Control and Prevention (CDC).

Background and Brief Description

Cancer is the second leading cause of death in the United States, second only to heart disease. In 2005, the most recent year for which complete information is available, more than 500,000 people died of cancer and more than 1.34 million were diagnosed with cancer. In addition to the personal impact of cancer, the financial burden is also substantial. The direct treatment costs of cancer in 2008 have been estimated at $93.2 billion, with additional indirect costs of $134.9 billion in lost productivity due to illness and premature death.

In 1992, Congress passed the Cancer Registries Amendment Act which established the National Program of Cancer Registries (NPCR). The NPCR provides support for central cancer registries (CCR) that collect, manage and analyze data about cancer cases. The NPCR-funded CCRs, which are located in states, the District of Columbia, and U.S. territories, report information to CDC annually through the National Program of Cancer Registries Cancer Surveillance System (NPCR CSS) (OMB No. 0920–0469, exp. 1/31/2010). CDC plans to request OMB approval to continue collecting this information for three years.

The NPCR CSS allows CDC to collect, aggregate, evaluate and disseminate cancer incidence data at the national level. The NPCR CSS is the primary source of information for *United States*

Cancer Statistics (*USCS*), which CDC has published annually since 2002. The latest *USCS* report published in 2009 provided cancer statistics for 96% of the United States population from all cancer registries whose data met national data standards. Prior to the publication of *USCS,* cancer incidence data at the national level were available for only 14% of the population of the United States.

The NPCR CSS also allows CDC to monitor cancer trends over time, describe geographic variation in cancer incidence throughout the country, and provide incidence data on minority populations and rare cancers. These activities and analyses further support CDC's planning and evaluation efforts for state and national cancer control and prevention. In addition, datasets can be made available for secondary analysis.

Each responding CCR is asked to report a cumulative file containing incidence data from the first diagnosis year for which the cancer registry collected data with the assistance of NPCR funds (e.g., 1995) through 12 months past the close of the most recent diagnosis year (e.g., 2007). Because cancer incidence data are already collected and aggregated at the state level the additional burden of reporting the information to CDC is small. Information is transmitted to CDC electronically once per year.

The Revision request will include changes. First, data definitions will be updated to reflect changes in national standards for cancer diagnosis and coding. In addition, the number of respondents will decrease. Respondents will be 45 stated-based CCRs, the CCR of the District of Columbia, the CCR of Puerto Rico, and the CCR that aggregates information from 10 flag territories and freely associated states in the Pacific Islands. In the previous OMB approval period, the territories, commonwealths, or freely-associated states were counted as individual respondents. In the next OMB approval period, the 10 flag territories, commonwealths, and freely-associated states will be counted as one respondent to more accurately reflect funding, operations and actual response burden. States that receive sole funding from the National Cancer Institute are not included as respondents. The adjusted number of respondents will result in a reduction in the total estimated burden hours for the NPCR CSS. The estimated burden per response will not change.

There are no costs to respondents except their time.

ESTIMATED ANNUALIZED BURDEN HOURS

Respondents	Number of respondents	Number of responses per respondent	Average burden per response (in hours)	Total burden (in hours)
Central Cancer Registries in States, Territories, and the District of Columbia	48	1	2	96

Dated: July 17, 2009.

Maryam I. Daneshvar,

Acting Reports Clearance Officer, Centers for Disease Control and Prevention.

[FR Doc. E9–17781 Filed 7–24–09; 8:45 am]

BILLING CODE 4163–18–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

National Institute of Allergy and Infectious Diseases; Notice of Closed Meeting

Pursuant to section 10(d) of the Federal Advisory Committee Act, as amended (5 U.S.C. App.), notice is hereby given of the following meeting.

The meeting will be closed to the public in accordance with the provisions set forth in sections 552b(c)(4) and 552b(c)(6), Title 5 U.S.C., as amended. The grant applications and the discussions could disclose confidential trade secrets or commercial property such as patentable material, and personal information concerning individuals associated with the grant applications, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

Name of Committee: National Institute of Allergy and Infectious Diseases Special Emphasis Panel, Clinical Trial Planning Grant.

Date: August 13, 2009.

Time: 12 p.m. to 2 p.m.

Agenda: To review and evaluate grant applications.

Place: National Institutes of Health, 6700B Rockledge Drive, Bethesda, MD 20817 (Telephone Conference Call).

Contact Person: Kenneth E. Santora, PhD, Scientific Review Officer, Scientific Review Program, Division of Extramural Activities, NIH/NIAID/DHHS, 6700B Rockledge Drive, MSC 7616, Bethesda, MD 20892–7616, 301–496–2550, *ks216i@nih.gov*.

This notice is being published less than 15 days prior to the meeting due to the timing limitations imposed by the review and funding cycle.

(Catalogue of Federal Domestic Assistance Program Nos. 93.855, Allergy, Immunology, and Transplantation Research; 93.856, Microbiology and Infectious Diseases Research, National Institutes of Health, HHS)

Dated: July 21, 2009.

Jennifer Spaeth,

Director, Office of Federal Advisory Committee Policy.

[FR Doc. E9–17833 Filed 7–24–09; 8:45 am]

BILLING CODE 4140–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

National Institute on Alcohol Abuse and Alcoholism; Notice of Closed Meeting

Pursuant to section 10(d) of the Federal Advisory Committee Act, as amended (5 U.S.C. App.), notice is hereby given of the following meeting.

The meeting will be closed to the public in accordance with the provisions set forth in sections 552b(c)(4) and 552b(c)(6), Title 5 U.S.C., as amended. The grant applications and the discussions could disclose confidential trade secrets or commercial property such as patentable material, and personal information concerning individuals associated with the grant applications, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

Name of Committee: National Institute on Alcohol Abuse and Alcoholism Special Emphasis Panel; NIAAA–NOT–OD–09–058 Competitive Revision Supplement.

Date: July 29–August 3, 2009.

Time: 9 a.m. to 6 p.m.

Agenda: To review and evaluate grant applications.

Place: National Institutes of Health, 6701 Rockledge Drive, Bethesda, MD 20892 (Virtual Meeting).

Contact Person: Ranga Srinivas, PhD, Chief, Extramural Project Review Branch, Office of Extramural Activities, National Institutes of Health, National Institute on Alcohol Abuse & Alcoholism, 5635 Fishers Lane, Room 2085, Rockville, MD 20852.

This notice is being published less than 15 days prior to the meeting due to the timing limitations imposed by the review and funding cycle.

(Catalogue of Federal Domestic Assistance Program Nos. 93.271, Alcohol Research Career Development Awards for Scientists and Clinicians; 93.272, Alcohol National Research Service Awards for Research Training; 93.273, Alcohol Research Programs; 93.891, Alcohol Research Center Grants; 93.701, ARRA Related Biomedical Research and Research Support Awards, National Institutes of Health, HHS)

Dated: July 20, 2009.

Jennifer Spaeth,

Director, Office of Federal Advisory Committee Policy.

[FR Doc. E9–17731 Filed 7–24–09; 8:45 am]

BILLING CODE 4140–01–M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

National Heart, Lung, and Blood Institute; Notice of Closed Meetings

Pursuant to section 10(d) of the Federal Advisory Committee Act, as amended (5 U.S.C. App.), notice is hereby given of the following meetings.

The meetings will be closed to the public in accordance with the provisions set forth in sections 552b(c)(4) and 552b(c)(6), Title 5 U.S.C., as amended. The grant applications and the discussions could disclose confidential trade secrets or commercial property such as patentable material, and personal information concerning individuals associated with the grant applications, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

Name of Committee: National Heart, Lung, and Blood Institute Special Emphasis Panel; NHLBI Grand Opportunities—Unsolicited Topics (ARRA).

Date: August 5–6, 2009.

Time: 7 p.m. to 5 p.m.

Agenda: To review and evaluate grant applications.

Place: Pier 5 Hotel, 711 Eastern Avenue, Baltimore, MD 21202.

Contact Person: Shelley S. Sehnert, PhD, Scientific Review Officer, Review Branch/DERA, National Heart, Lung, and Blood Institute, 6701 Rockledge Drive, Room 7206, Bethesda, MD 20892–7924. 301–435–0303. *ssehnert@nhlbi.nih.gov.*

Name of Committee: National Heart, Lung, and Blood Institute Special Emphasis Panel; NHLBI Grand Opportunities in BioResource Program (ARRA).

Date: August 7, 2009.

Time: 8 a.m. to 5 p.m.

Agenda: To review and evaluate grant applications.

Place: Sheraton Columbia Hotel, 10207 Wincopin Circle, Columbia, MD 21044.

Contact Person: David A. Wilson, PhD, Scientific Review Officer, Review Branch/DERA, National Heart, Lung, and Blood Institute, 6701 Rockledge Drive, Room 7204, Bethesda, MD 20892–7924. 301–435–0299. *wilsonda2@nhlbi.nih.gov.*

(Catalogue of Federal Domestic Assistance Program Nos. 93.233, National Center for Sleep Disorders Research; 93.837, Heart and Vascular Diseases Research; 93.838, Lung Diseases Research; 93.839, Blood Diseases and Resources Research; 93.701, ARRA Related Biomedical Research and Research Support Awards, National Institutes of Health, HHS)

Dated: July 20, 2009.

Jennifer Spaeth,

Director, Office of Federal Advisory Committee Policy.

[FR Doc. E9–17734 Filed 7–24–09; 8:45 am]

BILLING CODE 4140–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Centers for Disease Control and Prevention

Disease, Disability, and Injury Prevention and Control Special Emphasis Panel: Capacity Building Assistance (CBA) To Improve the Delivery and Effectiveness of Human Immunodeficiency Virus (HIV) Prevention Services for High-Risk and/or Racial/Ethnicity Minority Populations, Program Announcement Number PS09–906, Initial Review

Location: Doubletree Hotel Atlanta-Buckhead, 3342 Peachtree Road, NE., Atlanta, Georgia 30326. Telephone: (404) 231–1234.

Correction: This notice was published in the **Federal Register** on July 13, 2009, Volume 74, Number 132, page 33450. The original notice was published with an incorrect location.

Contact Person for More Information: Monica Farmer, M.Ed., Public Health Analyst, Strategic Science and Program Unit, Office of the Director, Coordinating Center for Infectious Diseases, CDC, 1600 Clifton Road NE., Mailstop E–60, Atlanta, GA 30333. Telephone (404) 498–2277.

The Director, Management Analysis and Services Office, has been delegated the authority to sign **Federal Register** notices pertaining to announcements of meetings and other committee management activities, for both CDC and the Agency for Toxic Substances and Disease Registry.

Dated: July 20, 2009.

Elaine L. Baker,

Director, Management Analysis and Services Office Centers for Disease Control and Prevention.

[FR Doc. E9–17796 Filed 7–24–09; 8:45 am]

BILLING CODE 4163–18–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Centers for Disease Control and Prevention

Disease, Disability, and Injury Prevention and Control Special Emphasis Panel: Center of Excellence in Public Health Informatics, Request for Application (RFA), HK–09–001, Initial Review

Location: Doubletree Hotel Atlanta-Buckhead, 3342 Peachtree Road, NE., Atlanta, Georgia 30326. Telephone: (404) 231–1234.

Correction: This notice was published in the **Federal Register** on July 1, 2009, Volume 74, Number 125, page 31452. The original notice was published with an incorrect location.

CONTACT PERSON FOR MORE INFORMATION: Scott J.N. McNabb, PhD, M.S., Associate Director for Science, National Center for Public Health Information and Service, CDC, 1600 Clifton Road NE., Mailstop E–78, Atlanta, GA 30333. Telephone (404) 498–6427. E-mail *smcnabb@cdc.gov.*

The Director, Management Analysis and Services Office, has been delegated the authority to sign **Federal Register** notices pertaining to announcements of meetings and other committee management activities, for both CDC and the Agency for Toxic Substances and Disease Registry.

Dated: July 20, 2009.

Elaine L. Baker,

Director, Management Analysis and Services Office, Centers for Disease Control and Prevention.

[FR Doc. E9–17799 Filed 7–24–09; 8:45 am]

BILLING CODE 4163–18–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

National Institute on Alcohol Abuse and Alcoholism; Notice of Closed Meeting

Pursuant to section 10(d) of the Federal Advisory Committee Act, as amended (5 U.S.C. App.), notice is hereby given of the following meeting.

The meeting will be closed to the public in accordance with the provisions set forth in sections 552b(c)(4) and 552b(c)(6), Title 5 U.S.C., as amended. The grant applications and the discussions could disclose confidential trade secrets or commercial property such as patentable material, and personal information concerning individuals associated with the grant applications, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

Name of Committee: National Institute on Alcohol Abuse and Alcoholism Special Emphasis Panel; Panel A: NIAAA Review of GO Grants & P30 Faculty recruitment Supplement.

Date: August 11, 2009.

Time: 8 a.m. to 7 p.m.

Agenda: To review and evaluate grant applications.

Place: Hyatt Regency Bethesda, One Bethesda Metro Center, 7400 Wisconsin Avenue, Bethesda, MD 20814.

Contact Person: Richard A Rippe, PhD, Scientific Review Officer, National Institute on Alcohol Abuse & Alcoholism, National Institutes of Health, 5635 Fishers Lane, Rm. 2109, Rockville, MD 20852, 301–443–8599, *rippera@mail.nih.gov*.

This notice is being published less than 15 days prior to the meeting due to the timing limitations imposed by the review and funding cycle.

(Catalogue of Federal Domestic Assistance Program Nos. 93.271 Alcohol Research Career Development Awards for Scientists and Clinicians; 93.272, Alcohol National Research Service Awards for Research Training; 93.273, Alcohol Research Programs; 93.891, Alcohol Research Center Grants; 93.701, ARRA Related Biomedical Research and Research Support Awards, National Institutes of Health, HHS)

Dated: July 20, 2009.

Jennifer Spaeth,

Director, Office of Federal Advisory Committee Policy.

[FR Doc. E9–17735 Filed 7–24–09; 8:45 am]

BILLING CODE 4140–01–M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

National Institute on Alcohol Abuse and Alcoholism; Notice of Closed Meeting

Pursuant to section 10(d) of the Federal Advisory Committee Act, as amended (5 U.S.C. App.), notice is hereby given of the following meeting.

The meeting will be closed to the public in accordance with the provisions set forth in sections 552b(c)(4) and 552b(c)(6), Title 5 U.S.C., as amended. The grant applications and the discussions could disclose confidential trade secrets or commercial property such as patentable material, and personal information concerning individuals associated with the grant applications, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

Name of Committee: National Institute on Alcohol Abuse and Alcoholism Special Emphasis Panel; Panel B: NIAAA Review of GO Grants and P30 Faculty Recruitment Supplements.

Date: August 11–12, 2009.

Time: 8 a.m. to 5 p.m.

Agenda: To review and evaluate grant applications.

Place: Hyatt Regency Bethesda, One Bethesda Metro Center, 7400 Wisconsin Avenue, Bethesda, MD 20814.

Contact Person: Ranga Srinivas, PhD, Chief, Extramural Project Review Branch, Office of Extramural Activities, National Institutes of Health, National Institute on Alcohol Abuse & Alcoholism, 5635 Fishers Lane, Room 2085, Rockville, MD 20852.

This notice is being published less than 15 days prior to the meeting due to the timing limitations imposed by the review and funding cycle.

(Catalogue of Federal Domestic Assistance Program Nos. 93.271, Alcohol Research Career Development Awards for Scientists and Clinicians; 93.272, Alcohol National Research Service Awards for Research Training; 93.273, Alcohol Research Programs; 93.891, Alcohol Research Center Grants; 93.701 ARRA Related Biomedical Research and Research Support Awards, National Institutes of Health, HHS)

Dated: July 20, 2009.

Jennifer Spaeth,

Director, Office of Federal Advisory Committee Policy.

[FR Doc. E9–17733 Filed 7–24–09; 8:45 am]

BILLING CODE 4140–01–M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

Office of the Director, National Institutes of Health; Notice of Closed Meeting

Pursuant to section 10(d) of the Federal Advisory Committee Act, as amended (5 U.S.C. App.), notice is hereby given of a meeting of the Advisory Committee to the Director, NIH.

The meeting will be closed to the public in accordance with the provisions set forth in sections 552b(c)(4) and 552b(c)(6), Title 5 U.S.C., as amended. The grant applications and the discussions could disclose confidential trade secrets or commercial property such as patentable material, and personal information concerning individuals associated with the grant applications, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

Name of Committee: Advisory Committee to the Director, NIH.

Date: August 17, 2009.

Time: 3 p.m. to 4 p.m.

Agenda: To review and evaluate grant applications.

Place: National Institutes of Health Natcher Building, 45 Center Drive, Bethesda, MD 20892 (Telephone Conference Call).

Contact Person: Penny W. Burgoon, PhD, Senior Assistant to the Deputy Director, Office of the Director, National Institutes of Health, 1 Center Drive, Building 1, Room 109, Bethesda, MD 20892. 301–451–5870. *burgoonp@od.nih.gov*.

(Catalogue of Federal Domestic Assistance Program Nos. 93.14, Intramural Research Training Award; 93.22, Clinical Research Loan Repayment Program for Individuals from Disadvantaged Backgrounds; 93.232, Loan Repayment Program for Research Generally; 93.39, Academic Research Enhancement Award; 93.936, NIH Acquired Immunodeficiency Syndrome Research Loan Repayment Program; 93.187, Undergraduate Scholarship Program for Individuals from Disadvantaged Backgrounds, National Institutes of Health, HHS)

Dated: July 20, 2009.

Jennifer Spaeth,

Director, Office of Federal Advisory Committee Policy.

[FR Doc. E9–17729 Filed 7–24–09; 8:45 am]

BILLING CODE 4140–01–M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

Center for Scientific Review; Notice of Closed Meeting

Pursuant to section 10(d) of the Federal Advisory Committee Act, as amended (5 U.S.C. App.), notice is hereby given of the following meeting.

The meeting will be closed to the public in accordance with the provisions set forth in sections 552b(c)(4) and 552b(c)(6), Title 5 U.S.C., as amended. The grant applications and the discussions could disclose confidential trade secrets or commercial property such as patentable material, and personal information concerning individuals associated with the grant applications, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

Name of Committee: Center for Scientific Review Special Emphasis Panel; Technological Innovations for Interdisciplinary Research on Behavioral Sciences.

Date: August 6, 2009.

Time: 9 a.m. to 11 p.m.

Agenda: To review and evaluate grant applications.

Place: National Institutes of Health, 6701 Rockledge Drive, Bethesda, MD 20892 (Virtual Meeting).

Contact Person: Biao Tian, PhD, Scientific Review Officer, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 3089B, MSC 7848, Bethesda, MD 20892, (301) 402–4411, *tianbi@csr.nih.gov*.

This notice is being published less than 15 days prior to the meeting due to the timing limitations imposed by the review and funding cycle.

(Catalogue of Federal Domestic Assistance Program Nos. 93.306, Comparative Medicine; 93.333, Clinical Research, 93.306, 93.333, 93.337, 93.393–93.396, 93.837–93.844, 93.846–93.878, 93.892, 93.893, National Institutes of Health, HHS)

Dated: July 21, 2009.

Jennifer Spaeth,

Director, Office of Federal Advisory Committee Policy.

[FR Doc. E9–17828 Filed 7–24–09; 8:45 am]

BILLING CODE 4140–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

Center for Scientific Review; Amended Notice of Meeting

Notice is hereby given of a change in the meeting of the Center for Scientific Review Special Emphasis Panel, July 13, 2009, 8:30 a.m. to July 14, 2009, 6 p.m., The George Washington University Inn, 824 New Hampshire Avenue, NW., Washington, DC 20037 which was published in the **Federal Register** on June 26, 2009, 74 FR 30597–30598.

The meeting will be held August 10, 2009 to August 11, 2009. The meeting time and location remain the same.

The meeting is closed to the public.

Dated: July 20, 2009.

Jennifer Spaeth,

Director, Office of Federal Advisory Committee Policy.

[FR Doc. E9–17827 Filed 7–24–09; 8:45 am]

BILLING CODE 4140–01–P

DEPARTMENT OF HOMELAND SECURITY

U.S. Citizenship and Immigration Services

Agency Information Collection Activities

Agency Information Collection Activities: Request for Electronic Mail and Text Message Notification, Emergency Submission to the Office of Management and Budget (OMB); Comment Request.

ACTION: 45-Day Emergency Notice of Information Collection Under Review: Request for Electronic Mail and Text Message Notification, OMB Control Number 1615–NEW.

The Department of Homeland Security, U.S. Citizenship and Immigration Services (USCIS), has submitted the following emergency information collection, utilizing emergency review procedures, to the Office of Management and Budget (OMB) for review and clearance in accordance with the Paperwork Reduction Act of 1995 (Pub.L. 104–13, 44 U.S.C. 35). The purpose of this notice is to allow 45 days for public comments. Comments are encouraged and will be accepted for thirty days until September 10, 2009. This process is conducted in accordance with 5 CFR 1320.10.

Written comments and/or suggestions regarding the item(s) contained in this notice, especially regarding the estimated public burden and associated response time, should be directed to the Department of Homeland Security (DHS), and to the Office of Information and Regulatory Affairs, Office of Management and Budget (OMB), USCIS Desk Officer. Comments may be submitted to: USCIS, Chief, Regulatory Management Division, Clearance Office, 111 Massachusetts Avenue, 3008, Washington, DC 20529–2210. You may also submit comments to DHS via facsimile to 202–272–8352 or via e-mail at *rfs.regs@dhs.gov*, and to the OMB USCIS Desk Officer via facsimile at 202–395–6974 or via e-mail at *oira_submission@omb.eop.gov*.

When submitting comments by e-mail please make sure to add OMB–54 in the subject box. Written comments and suggestions from the public and affected agencies should address one or more of the following four points:

(1) Evaluate whether the collection of information is necessary for the proper performance of the functions of the agency, including whether the information will have practical utility;

(2) Evaluate the accuracy of the agency's estimate of the burden of the collection of information, including the validity of the methodology and assumptions used;

(3) Enhance the quality, utility, and clarity of the information to be collected; and

(4) Minimize the burden of the collection of information on those who are to respond, including through the use of appropriate automated, electronic, mechanical, or other technological collection techniques, or other forms of information technology, *e.g.,* permitting electronic submission of responses.

Overview of this information collection:

(1) *Type of Information Collection:* Emergency request for OMB approval.

(2) *Title of the Form/Collection:* Request for Electronic Mail and Text Message Notification.

(3) *Agency form number, if any, and the applicable component of the Department of Homeland Security sponsoring the collection:* No form number. U.S. Citizenship and Immigration Services.

(4) *Affected public who will be asked or required to respond, as well as a brief abstract: Primary:* Individuals and Households. USCIS is posting an announcement on the Forms Web page at *http://www.uscis.gov* to alert applicants that they may submit their mobile phone numbers and e-mail addresses on an application cover sheet to receive an electronic notification that USCIS has received or taken another action on their application. USCIS plans to incorporate these data fields into all public use forms as their current OMB approval is set to expire.

(5) *An estimate of the total number of respondents and the amount of time estimated for an average respondent to respond:* 6 million responses at 3 minutes (.05) per response.

(6) *An estimate of the total public burden (in hours) associated with the collection:* 300,000 annual burden hours.

If you have additional comments, suggestions, or need a copy of the supporting statement, or additional information, please visit the USCIS Web site at: *http://www.regulations.gov/search/index.jsp.*

If additional information is required contact: USCIS, Regulatory Management Division, 111 Massachusetts Avenue, Washington, DC 20529–2210, (202) 272–8377.

Dated: July 21, 2009.

Sunday Aigbe,

Chief, Regulatory Products Division, U.S. Citizenship and Immigration Services, Department of Homeland Security.

[FR Doc. E9–17740 Filed 7–24–09; 8:45 am]

BILLING CODE 9111–97–P

DEPARTMENT OF HOMELAND SECURITY

U.S. Customs and Border Protection

Agency Information Collection Activities: Free Admittance Under Conditions of Emergency

AGENCY: U.S. Customs and Border Protection, Department of Homeland Security.

ACTION: 30-Day notice and request for comments; Extension of an existing information collection: 1651–0044.

SUMMARY: U.S. Customs and Border Protection (CBP) of the Department of Homeland Security has submitted the following information collection request to the Office of Management and Budget (OMB) for review and approval in accordance with the Paperwork Reduction Act: Free Admittance Under Conditions of Emergency. This is a proposed extension of an information collection that was previously approved. CBP is proposing that this information collection be extended with no change to the burden hours. This document is published to obtain comments from the public and affected agencies. This proposed information collection was previously published in the **Federal Register** (74 FR 23737) on May 20, 2009, allowing for a 60-day comment period. This notice allows for an additional 30 days for public comments. This process is conducted in accordance with 5 CFR 1320.10.

DATES: Written comments should be received on or before August 26, 2009.

ADDRESSES: Interested persons are invited to submit written comments on the proposed information collection to the Office of Information and Regulatory Affairs, Office of Management and Budget. Comments should be addressed to the OMB Desk Officer for Customs and Border Protection, Department of Homeland Security, and sent via electronic mail to *oira_submission@omb.eop.gov* or faxed to (202) 395–5806.

SUPPLEMENTARY INFORMATION: U.S. Customs and Border Protection (CBP) encourages the general public and affected Federal agencies to submit written comments and suggestions on proposed and/or continuing information collection requests pursuant to the Paperwork Reduction Act (Pub. L.104–13). Your comments should address one of the following four points:

(1) Evaluate whether the proposed collection of information is necessary for the proper performance of the functions of the agency/component, including whether the information will have practical utility;

(2) Evaluate the accuracy of the agencies/components estimate of the burden of The proposed collection of information, including the validity of the methodology and assumptions used;

(3) Enhance the quality, utility, and clarity of the information to be collected; and

(4) Minimize the burden of the collections of information on those who are to respond, including the use of appropriate automated, electronic, mechanical, or other technological techniques or other forms of information.

Title: Free Admittance Under Conditions of Emergency.

OMB Number: 1651–0044.

Form Number: None.

Abstract: This collection of information will be used in the event of an emergency or catastrophic event to monitor goods temporarily admitted into the United States for the purpose of rescue or relief.

Current Actions: There are no changes to the information collection. This submission is being made to extend the expiration date.

Type of Review: Extension (without change).

Affected Public: Nonprofit Assistance Organizations.

Estimated Number of Respondents: 1.

Estimated Time per Respondent: 1 hour.

Estimated Total Annual Burden Hours: 1.

If additional information is required contact: Tracey Denning, U.S. Customs and Border Protection, Office of Regulations and Rulings, 799 9th Street, NW., 7th Floor, Washington, DC 20229–1177, at 202–325–0265.

Dated: July 21, 2009.

Tracey Denning,

Agency Clearance Officer, Customs and Border Protection.

[FR Doc. E9–17877 Filed 7–24–09; 8:45 am]

BILLING CODE 9111–14–P

DEPARTMENT OF HOMELAND SECURITY

U.S. Citizenship and Immigration Services

[CIS No. 2469–09; DHS Docket No. USCIS–2009–0003]

RIN 1615–ZA82

Extension of the Designation of Somalia for Temporary Protected Status and Automatic Extension of Employment Authorization Documentation for Somalian TPS Beneficiaries

AGENCY: U.S. Citizenship and Immigration Services, Department of Homeland Security.

ACTION: Notice.

SUMMARY: This Notice announces that the Secretary of Homeland Security has extended the designation of Somalia for temporary protected status (TPS) for 18 months, from its current expiration date of September 17, 2009 through March 17, 2011. This Notice also sets forth procedures necessary for nationals of Somalia (or aliens having no nationality who last habitually resided in Somalia) with TPS to re-register with U.S. Citizenship and Immigration Services (USCIS). Re-registration is limited to persons who have previously registered for TPS under the designation of Somalia and whose applications have been granted by or remain pending with USCIS. Certain nationals of Somalia (or aliens having no nationality who last habitually resided in Somalia) who have not previously applied to USCIS for TPS may be eligible to apply under the late initial registration provisions.

Given the timeframes involved with processing TPS re-registration applications, the Department of Homeland Security (DHS) recognizes the possibility that all re-registrants may not receive new EADs until after their current EADs expire on September 17, 2009. Accordingly, this Notice automatically extends the validity of EADs issued under the TPS designation of Somalia for 6 months, through March 17, 2010, and explains how TPS beneficiaries and their employers may determine which EADs are automatically extended.

DATES: The extension of the TPS designation of Somalia is effective September 18, 2009, and will remain in effect through March 17, 2011. The 60-day re-registration period begins July 27, 2009, and will remain in effect until September 25, 2009.

FOR FURTHER INFORMATION CONTACT: TPS Operations Program Manager, Status

and Family Branch, Office of Service Center Operations, U.S. Citizenship and Immigration Services, Department of Homeland Security, 20 Massachusetts Avenue, NW., Washington, DC 20529–2060, telephone (202) 272–1533. This is not a toll-free call. Further information will also be available at local USCIS offices upon publication of this Notice and on the USCIS Web site at *http://www.uscis.gov.*

Note: The phone number provided here is solely for questions regarding this TPS Notice. It is not for individual case status inquiries. Applicants seeking information about the status of individual cases can check Case Status Online available at the USCIS Web site, or may call the USCIS National Customer Service Center at 1–800–375–5283 (TTY 1–800–767–1833).

SUPPLEMENTARY INFORMATION:

Abbreviations and Terms Used in This Document

Act—Immigration and Nationality Act
ASC—USCIS Application Support Center
DHS—Department of Homeland Security
HSA—Homeland Security Act of 2002
OSC—U.S. Department of Justice Office of Special Counsel for Immigration Related Unfair Employment Practices
EAD—Employment Authorization Document
Secretary—Secretary of Homeland Security
TPS—Temporary Protected Status
USCIS—U.S. Citizenship and Immigration Services

What is Temporary Protected Status?

TPS is an immigration status granted to eligible nationals of a country designated for TPS under the Act (or to persons without nationality who last habitually resided in the designated country). During the period for which the Secretary has designated a country for TPS, TPS beneficiaries are eligible to remain in the United States and may obtain work authorization, so long as they continue to meet the terms and conditions of their TPS status. The granting of TPS does not lead to permanent resident status. When the Secretary terminates a country's TPS designation, beneficiaries return to the same immigration status they maintained before TPS (unless that status has since expired or been terminated) or to any other status they may have been obtained while registered for TPS.

What authority does the Secretary of Homeland Security have to extend the designation of Somalia for TPS?

Section 244(b)(1) of the Act, 8 U.S.C. 1254a(b)(1), authorizes the Secretary, after consultation with appropriate agencies of the government, to designate a foreign State (or part thereof) for TPS.[1] The Secretary may then grant TPS to eligible nationals of that foreign State (or aliens having no nationality who last habitually resided in that State). Section 244(a)(1)(A) of the Act; 8 U.S.C. 1254a(a)(1)(A).

At least 60 days before the expiration of a TPS designation, the Secretary, after consultations with appropriate agencies of the government, must review the conditions in a foreign State designated for TPS to determine whether the conditions for the TPS designation continue to be met and, if so, must determine the length of an extension of the TPS designation. Sections 244(b)(3)(A) and (C) of the Act, 8 U.S.C. 1254a(b)(3)(A) and (C). If the Secretary determines that the foreign State no longer meets the conditions for the TPS designation, she must terminate the designation. Section 244(b)(3)(B) of the Act, 8 U.S.C. 1254a(b)(3)(B).

Why was Somalia designated for TPS?

On September 16, 1991, the Attorney General published a notice in the **Federal Register**, at 56 FR 46804, designating Somalia for TPS due to ongoing armed conflict and extraordinary and temporary conditions within the country. The Attorney General extended TPS for Somalia nine times, determining in each instance that the conditions warranting the designation continued to be met. 57 FR 32232 (July 21, 1992); 58 FR 48898 (Sept. 20, 1993); 59 FR 43359 (Aug. 23, 1994); 60 FR 39005 (July 31, 1995); 61 FR 39472 (July 29, 1996); 62 FR 41421 (Aug. 1, 1997); 63 FR 51602 (Sept. 28, 1998); 64 FR 49511 (Sept. 13, 1999); 65 FR 69789 (Nov. 20, 2000).

On September 4, 2001, the Attorney General redesignated Somalia for TPS by publishing a notice in the **Federal Register** at 66 FR 46288, based upon ongoing armed conflict and extraordinary and temporary conditions within Somalia, which had worsened. Since that date, the Attorney General and the Secretary of Homeland Security have extended the TPS designation of Somalia six times based on determinations that the conditions warranting the designation continued to be met. 67 FR 48950 (July 26, 2002); 68 FR 43147 (July 21, 2003); 69 FR 47937 (Aug. 6, 2004); 70 FR 43895 (July 29, 2005); 71 FR 42653 (July 27, 2006); 73 FR 13245 (Mar. 12, 2008).

Why is the Secretary extending the TPS designation for Somalia through March 17, 2011?

Over the past year, DHS and the Department of State have continued to review conditions in Somalia. Based on this review, the Secretary has determined that an 18-month extension is warranted, because the armed conflict is ongoing, and the extraordinary and temporary conditions that prompted the September 4, 2001, redesignation persist. Section 244(b)(1)(A), (C) of the Act; 8 U.S.C. 1254a(b)(1)(A), (C).

Somalia remains in a state of chaos characterized by the lack of central government; a crippled economy, the absence of civil structures, destruction of infrastructure; and generalized insecurity in the form of banditry, kidnapping, looting, revenge killings, targeted assassinations, suicide car-bombings, and inter-clan fighting. Humanitarian efforts have been hindered by increasing targeted attacks on humanitarian workers countrywide. In 2007, 6,500 civilians were killed. An additional 2,136 civilians were killed in the first half of 2008. Almost 750,000 people fled Mogadishu to escape the fighting between April and July 2008. Between January and August 2008, the number of people in need of humanitarian assistance increased 77 percent, from 1.8 million to 3.2 million people. The intensifying conflict, drought, increased food prices, the targeting of humanitarian workers, and growing piracy off the Somali coast have exacerbated the humanitarian toll on the Somali people.

Based upon her review, the Secretary has determined, after consultation with the appropriate government agencies, that the conditions that prompted the 2001 redesignation of Somalia for TPS continue to be met. *See* section 244(b)(3)(A) of the Act; 8 U.S.C. 1254a(b)(3)(A). An ongoing armed conflict and extraordinary and temporary conditions in Somalia prevent aliens who are nationals of Somalia (or aliens having no nationality who last habitually resided in Somalia) from returning in safety. The Secretary also has determined that it is not contrary to the national interest of the United States to permit aliens who meet the eligibility requirements of TPS to remain in the United States temporarily. *See* section 244(b)(1)(C) of the Act. On the basis of these findings and determinations, the Secretary concludes that the designation of Somalia for TPS should be extended for an additional 18-

[1] As of March 1, 2003, in accordance with section 1517 of Title XV of the Homeland Security Act of 2002 (HSA), Public Law 107–296, 116 Stat. 2135, any reference to the Attorney General in a provision of the Immigration and Nationality Act describing functions which were transferred from the Attorney General or other Department of Justice official to the Department of Homeland Security by the HSA ''shall be deemed to refer to the Secretary'' of Homeland Security. *See* 6 U.S.C. 557 (2003) (codifying HSA, Title XV, Section 1517).

month period. *See* section 244(b)(3)(C) of the Act, 8 U.S.C. 1254a(b)(3)(C). There are approximately 250 nationals of Somalia (or aliens having no nationality who last habitually resided in Somalia) who are eligible for TPS under this designation.

What Actions Should Qualifying Aliens Take Pursuant to This Notice?

To maintain TPS, a national of Somalia (or an alien having no nationality who last habitually resided in Somalia) who was granted TPS and who has not had TPS withdrawn or who has a pending application for TPS must re-register for TPS during the 60-day re-registration period from July 27, 2009 until September 25, 2009. To re-register, aliens must follow the filing procedures set forth in this Notice. An addendum to this Notice provides instructions on this extension, including filing and eligibility requirements for TPS and EADs. Information concerning the extension of the designation of Somalia for TPS also will be available at local USCIS offices upon publication of this Notice and on the USCIS Web site at *http://www.uscis.gov.*

Notice of Extension of the TPS Designation of Somalia

By the authority vested in me as Secretary of Homeland Security under section 244 of the Act, 8 U.S.C. 1254a, I have determined, after consultation with the appropriate government agencies, that the conditions that prompted the redesignation of Somalia for temporary protected status (TPS) on September 4, 2001, continue to be met. *See* section 244(b)(3)(A) of the Immigration and Nationality Act, 8 U.S.C. 1254a(b)(3)(A). I also have determined that it is not contrary to the national interest of the United States to permit aliens who meet the eligibility requirements of TPS to remain in the United States temporarily. *See* section 244(b)(1)(C) of the Act. On the basis of these determinations, I am extending the TPS designation of Somalia for 18 months from September 18, 2009, through March 17, 2011.

Dated: July 15, 2009.

Janet Napolitano,

Secretary.

Temporary Protected Status Filing Requirements

Do I need to re-register for TPS if I currently have benefits through the designation of Somalia for TPS, and would like to maintain them?

Yes. If you already have received TPS benefits through the TPS designation of Somalia, your benefits will expire on September 17, 2009. All TPS beneficiaries must comply with the re-registration requirements, and submit any associated application fees or applications for waivers of the fees described in this Notice in order to maintain TPS benefits through March 17, 2011. TPS benefits include temporary protection against removal from the United States and employment authorization during the TPS designation period. Section 244(a)(1) of the Act; 8 U.S.C. 1254a(a)(1). Failure to re-register without good cause will result in the withdrawal of your temporary protected status and possibly your removal from the United States. Section 244(c)(3)(C) of the Act; 8 U.S.C. 1254a(c)(3)(C).

If I am currently registered for TPS or have a pending application for TPS, how do I re-register to renew my benefits for the duration of the extension period?

Please submit the proper forms and fees according to Tables 1 and 2 below. The following are some helpful tips to keep in mind when completing your application:

- All applicants are strongly encouraged to pay close and careful attention when filling out the required forms to help ensure that their dates of birth, alien registration numbers, spelling of their names, and other required information is correctly entered on the forms.
- All questions on the required forms should be fully and completely answered. Failure to fully complete each required form may result in a delay in processing of your application.
- Aliens who have previously registered for TPS, but whose applications remain pending, should follow the filing instructions in this Notice if they wish to renew their TPS benefits.
- All TPS re-registration applications submitted without the required fees will be returned to applicants.
- All fee waiver requests should be filed in accordance with 8 CFR 244.20.
- If you received an Employment Authorization Document (EAD) during the most recent registration period, please submit a photocopy of the front and back of your EAD.

TABLE 1—APPLICATION FORMS AND APPLICATION FEES

If . . .	And . . .	Then . . .
You are re-registering for TPS	You are applying for an extension of your EAD valid through March 17, 2011.	You must complete and file the Form I–765, Application for Employment Authorization, with the fee of $340 or a fee waiver request. You must also submit Form I–821, Application for Temporary Protected Status, with no fee.
You are re-registering for TPS	You are NOT applying for renewal of your EAD.	You must complete and file the Form I–765 with no fee and Form I–821 with no fee. Note: DO NOT check any box for the question "I am applying for" listed on Form I–765, as you are NOT requesting an EAD benefit.
You are applying for TPS as a late initial registrant (see below) and you are between the ages of 14 and 65 (inclusive).	You are applying for a TPS-related EAD	You must complete and file Form I–821 with the $50 fee or fee waiver request. You must also submit Form I–765 with the fee of $340 or a fee waiver request.
You are applying for TPS as a late initial registrant and are under age 14 or over age 65.	You are applying for a TPS-related EAD	You must complete and file Form I–821 with the $50 fee or fee waiver request. You must also submit Form I–765 with no fee.
You are applying for TPS as a late initial registrant, regardless of age.	You are NOT applying for an EAD	You must complete and file Form I–821 with the $50 fee or fee waiver request. You must also submit Form I-765 with no fee.

TABLE 1—APPLICATION FORMS AND APPLICATION FEES—Continued

If . . .	And . . .	Then . . .
Your previous TPS application is still pending ...	You are applying to renew your temporary treatment benefits (i.e., an EAD with category "C–19" on its face).	You must complete and file the Form I–765 with the fee of $340 or a fee waiver request. You must also submit Form I–821, with no fee.

Certain applicants must also submit a Biometric Service Fee (See Table 2).

TABLE 2—BIOMETRIC SERVICE FEE

If . . .	And . . .	Then . . .
You are 14 years of age or older	1. You are re-registering for TPS, or 2. You are applying for TPS under the late initial registration provisions, or 3. Your TPS application is still pending and you are applying to renew temporary treatment benefits (i.e., EAD with category "C–19" on its face).	You must submit a Biometric Service fee of $80 or a fee waiver request.
You are younger than 14 years of age	1. You are applying for an EAD, or 2. You are NOT applying for an EAD	You do NOT need to submit a Biometric Service fee.

What editions of Form I–821 and Form I–765 should I submit?

Only versions of Form I–821 dated October 17, 2007 (Rev. 10/17/07), or later, will be accepted. Only versions of Form I–765 dated May 27, 2008 (Rev. 5/27/08), or later, will be accepted. The revision date can be found in the bottom right corner of the form. The proper forms can be found on the Internet at *http://www.uscis.gov* or by calling the USCIS forms hotline at 1–800–870–3676.

Where should I submit my application for TPS?

Mail your application for TPS to the proper address in Table 3:

TABLE 3—MAILING ADDRESSES

U.S. Postal Service deliveries . . .	Non-U.S. Postal Service deliveries . . .
U.S. Citizenship and Immigration Services: Attn: TPS Somalia, P.O. Box 8677, Chicago, IL 60680–8677.	U.S. Citizenship and Immigration Services: Attn: TPS Somalia, 131 S. Dearborn—3rd Floor, Chicago, IL 60603–5517.

If an Immigration Judge or the Board of Immigration Appeals granted you TPS, you must submit evidence of the grant of TPS (such as an order from the Immigration Judge) with your application. In addition, when you receive your receipt notice (Form I–797), you will need to send an e-mail to *Tpsijgrant.vsc@dhs.gov* that includes the following information:

- Your name;
- Your date of birth;
- The receipt number for your re-registration;
- Your A-number; and
- The date you were granted TPS.

Please note that the e-mail address provided above is solely for re-registration applicants who were granted TPS by Immigration Judges or by the Board of Immigration Appeals to notify USCIS of their grant of TPS. It is not for individual case status inquiries. Applicants seeking information about the status of their individual cases can check Case Status Online available at the USCIS Web site, or call the USCIS National Customer Service Center.

Can I file my application electronically?

If you are filing for re-registration and do not need to submit supporting documentation (see Table 4) with your application, you may file your application electronically. To file your application electronically, follow directions on the USCIS Web site at: *http://www.uscis.gov.*

How will I know if I need to submit supporting documentation with my application package?

See Table 4 below to determine if you need to submit supporting documentation.

TABLE 4—WHO SHOULD SUBMIT SUPPORTING DOCUMENTATION?

If . . .	Then . . .
One or more of the questions listed in Part 4, Question 2 of Form I–821 applies to you.	You must submit an explanation, on a separate sheet(s) of paper, and/or additional documentation. Depending on the nature of the question(s) you are addressing, additional documentation alone may suffice, but usually, a written explanation will also be needed.

TABLE 4—WHO SHOULD SUBMIT SUPPORTING DOCUMENTATION?—Continued

If . . .	Then . . .
You were granted TPS by an Immigration Judge or the Board of Immigration Appeals (BIA).	You must include evidence of the grant of TPS (such as a final order from the Immigration Judge or decision of the BIA) with your application package.

How do I know if I am eligible for late initial registration?

You may be eligible for late initial registration under 8 CFR 244.2. In order to be eligible for late initial registration, you must:

(1) Be a national of Somalia (or an alien who has no nationality and who last habitually resided in Somalia);

(2) Have continuously resided in the United States since September 4, 2001;

(3) Have been continuously physically present in the United States since September 4, 2001; and

(4) Be both admissible as an immigrant, except as provided under section 244(c)(2)(A) of the Act, and not ineligible for TPS under section 244(c)(2)(B) of the Act.

Additionally, you must be able to demonstrate that during the initial registration period for the redesignation of TPS for Somalia (September 4, 2001 to December 3, 2001), you:

(1) Were a nonimmigrant or had been granted voluntary departure status or any relief from removal;

(2) Had an application for change of status, adjustment of status, asylum, voluntary departure, or any relief from removal or change of status pending or subject to further review or appeal;

(3) Were a parolee or had a pending request for reparole; or

(4) Are the spouse or child of an alien currently eligible to be a TPS registrant.

An applicant for late initial registration must file an application for late registration no later than 60 days after the expiration or termination of the conditions described above. *See* 8 CFR 244.2(g). All late initial registration applications for TPS, pursuant to the designation of Somalia, should be submitted to the Chicago, Illinois address listed above.

Are certain aliens ineligible for TPS?

Yes. There are certain criminal and terrorism-related inadmissibility grounds that render an alien ineligible for TPS. *See* section 244(c)(2)(A)(iii) of the Act; 8 U.S.C. 1254a(c)(2)(A)(iii). Further, aliens who have been convicted of any felony or two or more misdemeanors committed in the United States are ineligible for TPS under section 244(c)(2)(B)(i) of the Act, 8 U.S.C. 1254a(c)(2)(B)(i), as are aliens described in section 208(b)(2)(A) of the Act, 8 U.S.C. 1158(b)(2)(A) (describing the bars to asylum). *See* section 244(c)(2)(B)(ii) of the Act; 8 U.S.C. 1254a(c)(2)(B)(ii).

If I currently have TPS, can I lose my TPS benefits?

Yes, you can lose your TPS benefits. TPS and related benefits will be withdrawn if you:

(1) Are not eligible for TPS,

(2) Fail to timely re-register for TPS without good cause, or

(3) Fail to maintain continuous physical presence in the United States. *See* sections 244(c)(3)(A)–(C) of the Act; 8 U.S.C. 1254a(c)(3)(A)–(C).

Does TPS lead to lawful permanent residence status?

No. TPS is a temporary benefit. Having been granted TPS does not, of itself, provide an alien with a basis for seeking lawful permanent resident status. A TPS beneficiary who wants to become a lawful permanent resident must qualify for this status based on a family relationship, employment classification, or other generally available basis for immigration, and must be otherwise admissible as an immigrant.

If I am currently covered under TPS, what status will I have if my country's TPS designation is terminated?

When a country's TPS designation is terminated, you will maintain the same immigration status that you held prior to obtaining TPS (unless that status has since expired or been terminated), or any other status you may have acquired while registered for TPS. Accordingly, if you held no lawful immigration status prior to being granted TPS and did not obtain any other status during the TPS period, you will revert to unlawful status upon the termination of the TPS designation. Once the Secretary determines that a TPS designation should be terminated, aliens who had TPS under that designation, and who do not hold any other lawful immigration status, must plan for their departure from the United States.

May I apply for another immigration benefit while registered for TPS?

Yes. Registration for TPS does not prevent you from applying for nonimmigrant status, filing for adjustment of status based on an immigrant petition, or applying for any other immigration benefit or protection. Section 244(a)(5) of the Act; 8 U.S.C. 1254a(a)(5). For the purposes of change of status and adjustment of status, an alien is considered to be in, and maintaining, lawful status as a nonimmigrant during the period in which he or she is granted TPS. *See* section 244(f)(4) of the Act; 8 U.S.C. 1254a(f)(4).

However, if an alien has periods of time when he or she had no lawful immigration status before, or after, the alien's time in TPS, those period(s) of unlawful presence may negatively affect that alien's ability to adjust to permanent resident status or be granted other immigration benefits, depending on the circumstances. *See e.g.,* section 212(a)(9) of the Act; 8 U.S.C. 1182(a)(9) (unlawful presence ground of inadmissibility that is triggered by a departure from the United States). In some cases, the unlawful presence ground of inadmissibility, or certain other grounds of inadmissibility, may be waived when an alien applies for adjustment or change of status.

How does an application for TPS affect my application for asylum or other immigration benefits?

An application for TPS does not affect an application for asylum or any other immigration benefit. Denial of an application for asylum or any other immigration benefit does not affect an alien's TPS eligibility, although the grounds for denying one form of relief may also be grounds for denying TPS. For example, a person who has been convicted of a particularly serious crime is not eligible for asylum or TPS. *See* sections 244(b)(2)(A)(ii) and 244(c)(2)(B)(ii) of the Act; 8 U.S.C. 1254a(b)(2)(A)(ii) and 8 U.S.C. 1254a(c)(2)(B)(ii).

Can nationals of Somalia (or aliens having no nationality who last habitually resided in Somalia) who entered the United States after September 4, 2001, file for TPS?

No. This extension does not expand TPS eligibility to those who are not currently eligible. To be eligible for benefits under this extension, nationals

of Somalia (or aliens having no nationality who last habitually resided in Somalia) must have continuously resided and have been continuously physically present in the United States since September 4, 2001. *See* section 244(c)(1) of the Act, 8 U.S.C. 1254a(c)(1); *see also* 66 FR 46288 (Sept. 4, 2001).

Employment Authorization Document Automatic Extension Guidelines

Who is eligible to receive an automatic six-month EAD extension from September 17, 2009 to March 17, 2010?

To receive an automatic six-month extension of an EAD, an individual must be a national of Somalia (or an alien having no nationality who last habitually resided in Somalia) who has applied for and received an EAD under the designation of Somalia for TPS and who has not had TPS withdrawn or denied. This automatic extension is limited to EADs issued on Form I–766, Employment Authorization Document, bearing an expiration date of September 17, 2009. These EADs must also bear the notation ''A–12'' or ''C–19'' on the face of the card under ''Category.''

How will I know if I have to report to an Application Support Center (ASC) to submit biometrics?

USCIS will mail you a notice with instructions as to whether or not you are required to appear at an ASC for biometrics collection. To increase efficiency and improve customer service, whenever possible, USCIS will reuse previously-captured biometrics and will conduct necessary security checks using those biometrics, such that you may not be required to appear at an ASC. Due to systems limitations, it may not be possible in every case to reuse biometrics.

However, even if you do not need to attend an ASC appointment, you are required to pay the separate biometrics fee or submit an appropriately supported fee waiver request. *See* 8 CFR 244.6. This fee will help cover the USCIS costs associated with use and maintenance of collected biometrics (such as fingerprints) for FBI and other background checks, identity verification, and document production.

What documents should I bring to my ASC appointment?

When you report to an ASC, you must bring the following documents:

(1) Your receipt notice for your re-registration application;

(2) Your ASC appointment notice; and

(3) Your current EAD.

Failure to appear at an ASC for a required ASC appointment will result in denial of your case due to abandonment unless you submit an address change notification (see instructions below) or a rescheduling request prior to your appointment.

If no further action is required for your case, you will receive a new EAD by mail valid through March 17, 2011. If your case requires further resolution, USCIS will contact you in writing to explain what additional information, if any, is necessary to resolve your case. If your application is subsequently approved, you will receive a new EAD in the mail with an expiration date of March 17, 2011.

What if my address changes after I file my re-registration application?

If your address changes after you file your application for re-registration, you must complete and submit Form AR–11 by mail or electronically. The mailing address is: U.S. Citizenship and Immigration Services, Change of Address, P.O. Box 7134, London, KY 40742–7134.

Form AR–11 can also be filed electronically by following the directions on the USCIS Web site at: *http://www.uscis.gov.* To facilitate processing your address change on your TPS application, you may call the USCIS National Customer Service Center at 1–800–375–5283 (TTY 1–800–767–1833) to request that your address be updated on your application. Please note that calling the USCIS National Customer Service Center does *not* relieve you of your burden to properly file a Form AR–11 with USCIS.

May I request an interim EAD at my local District Office?

No. USCIS will not issue interim EADs to TPS applicants and re-registrants at District Offices.

How may employers determine whether an EAD has been automatically extended for six months, through March 17, 2009, and is therefore an acceptable document for completion of the Form I–9, Employment Eligibility Verification?

An EAD that has been automatically extended by this Notice through March 17, 2010 will bear the notation ''A–12'' or ''C–19'' on the face of the Form I–766 under ''Category,'' and have an expiration date of September 17, 2009, on the face of the card. New EADs or extension stickers showing the March 17, 2009, expiration date of the six-month automatic extension will not be issued. Employers should not request proof of Somalian citizenship.

Employers should accept an EAD as a valid ''List A'' document and not ask for additional Form I–9 documentation if presented with an EAD that has been extended pursuant to this **Federal Register** Notice, and the EAD reasonably appears on its face to be genuine and to relate to the employee. This extension does not affect the right of an applicant for employment or an employee to present any legally acceptable document as proof of identity and eligibility for employment.

Note to Employers: Employers are reminded that the laws requiring employment eligibility verification and prohibiting unfair immigration-related employment practices remain in full force. This Notice does not supersede or in any way limit applicable employment verification rules and policy guidance, including those rules setting forth re-verification requirements. For questions, employers may call the USCIS Customer Assistance Office at 1–800–357–2099. Also, employers may call the U.S. Department of Justice Office of Special Counsel for Immigration Related Unfair Employment Practices (OSC) Employer Hotline at 1–800–255–8155. Additional information is available on the OSC Web site at *http://www.usdoj.gov/crt/osc/index.html.*

How may employers determine an employee's eligibility for employment once the automatic six-month extension expires on March 17, 2010?

Eligible TPS aliens will possess an EAD on Form I–766 with an extension date of March 17, 2011. The EAD will bear the notation ''A–12'' or ''C–19'' on the face of the card under ''Category,'' and should be accepted for the purposes of verifying identity and employment authorization.

What documents may a qualified individual show to his or her employer as proof of employment authorization and identity when completing Form I–9?

During the first six months of this extension, qualified individuals who have received a six-month automatic extension of their EADs by virtue of this **Federal Register** Notice may present their TPS-based EADs to their employers, as described above, as proof of identity and employment authorization through March 17, 2010. To minimize confusion over this extension at the time of hire or re-verification, qualified individuals may also present a copy of this **Federal Register** Notice regarding the automatic extension of employment authorization documentation through March 17, 2010. After March 17, 2010, a qualified individual may present a new EAD valid through March 17, 2011.

Individuals may also present any other legally acceptable document or combination of documents listed on the

Form I–9 as proof of identity and employment eligibility.

[FR Doc. E9–17862 Filed 7–24–09; 8:45 am]

BILLING CODE 9111–97–P

DEPARTMENT OF HOMELAND SECURITY

National Communications System

[Docket No. NCS–2009–0003]

President's National Security Telecommunications Advisory Committee

AGENCY: National Communications System, DHS.

ACTION: Notice of an Open Advisory Committee Meeting

SUMMARY: The President's National Security Telecommunications Advisory Committee (NSTAC) will be meeting by teleconference; the meeting will be open to the public.

DATES: August 11, 2009, from 3 p.m. until 4 p.m.

ADDRESSES: The meeting will take place by teleconference. For access to the conference bridge and meeting materials, contact Ms. Sue Daage at (703) 235–5526 or by e-mail at *sue.daage@dhs.gov* by 5 p.m. August 4, 2009. If you desire to submit comments regarding the August 11, 2009 meeting, they must be submitted by July 29, 2009. Comments must be identified by NCS–2009–0003 and may be submitted by one of the following methods: *Federal eRulemaking Portal: http://www.regulations.gov.* Follow the instructions for submitting comments.

E-mail: NSTAC1@dhs.gov. Include docket number in the subject line of the message.

Mail: Office of the Manager, National Communications System (Government Industry Planning and Management Branch), Department of Homeland Security, 245 Murray Lane, SW., Washington, DC 20598–0615; Fax: 1–866–466–5370.

Instructions: All submissions received must include the words ''Department of Homeland Security'' and NCS–2009–0003, the docket number for this action. Comments received will be posted without alteration at *http://www.regulations.gov*, including any personal information provided.

Docket: For access to the docket to read background documents or comments received by the NSTAC, go to *http://www.regulations.gov.*

FOR FURTHER INFORMATION CONTACT: Ms. Sue Daage, Government Industry Planning and Management Branch at (703) 235–5526, e-mail: *sue.daage@dhs.gov*, or write the Deputy Manager, National Communications System, Department of Homeland Security, 245 Murray Lane, SW., Washington, DC 20598–0615.

SUPPLEMENTARY INFORMATION: NSTAC advises the President on issues and problems related to implementing national security and emergency preparedness telecommunications policy. Notice of this meeting is given under the Federal Advisory Committee Act (FACA), Public Law 92–463 (1972), as amended appearing in 5 U.S.C. App. 2. At the upcoming open meeting, the NSTAC Principals will receive comments from government stakeholders and updates on the October Planning Meeting and the Satellite Task Force. The NSTAC also will discuss and vote on the 2009–2010 Work Plan.

Persons with disabilities who require special assistance should indicate this when arranging access to the teleconference and are encouraged to identify anticipated special needs as early as possible.

Dated: July 21, 2009.

James Madon,

Director, National Communications System.

[FR Doc. E9–17806 Filed 7–24–09; 8:45 am]

BILLING CODE 9110–9P–P

DEPARTMENT OF THE INTERIOR

Bureau of Land Management

[LL WO31000–L13100000.PP0000–24–1A; OMB Control Number 1004–0185]

Information Collection; Oil and Gas Exploration, Leasing, and Drainage Operations

AGENCY: Bureau of Land Management, Interior.

ACTION: 30-day Notice and Request for Comments.

SUMMARY: The Bureau of Land Management (BLM) has submitted an information collection request to the Office of Management and Budget (OMB) for a 3-year extension of OMB Control Number 1004–0185 under the Paperwork Reduction Act. The respondents are businesses which provide certification and various nonform data to the BLM in order to conduct oil and gas exploration and leasing activities.

DATES: The OMB is required to respond to this information collection request within 60 days but may respond after 30 days. Therefore, written comments should be received on or before August 26, 2009.

ADDRESSES: You may submit comments directly to the Desk Officer for the Department of the Interior (OMB #1004–0185), Office of Management and Budget, Office of Information and Regulatory Affairs, fax 202–395–5806, or by electronic mail at *oira_docket@omb.eop.gov.* Please mail a copy of your comments to: Bureau Information Collection Clearance Officer (WO–630), Department of the Interior, 1849 C Street, NW., Mail Stop 401 LS, Washington, DC 20240.

You may also send a copy of your comments by electronic mail to *jean_sonneman@blm.gov.*

FOR FURTHER INFORMATION CONTACT: Barbara Gamble, Division of Fluid Minerals at 202–452–0338 (Commercial or FTS).

SUPPLEMENTARY INFORMATION:

Title: Oil and Gas Exploration, Leasing, and Drainage Operations (43 CFR parts 3100, 3120, 3150, 3162).

OMB Number: 1004–0185.

Form Number: 3100–11 (certification).

Abstract: The Bureau of Land Management proposes to extend the currently approved collections of information, which enable it to determine whether applicants are qualified to conduct oil and gas exploration and leasing activities, and whether oil and gas leases are protected from drainage.

60-Day Notice: On November 20, 2008, the BLM published a 60-day notice (73 FR 70363) requesting comments on the proposed information collection. The comment period ended on January 20, 2009. No comments were received.

Current Action: This proposal is being submitted to extend the expiration date of July 31, 2009.

Type of Review: 3-year extension.

Affected Public: Businesses.

Obligation to Respond: Required to obtain or retain benefits.

Estimated Number of Annual Responses: 2,880

Estimated Number of Annual Burden Hours: 6,835.

There is no filing fees associated with these information collections. The BLM requests comments on the following subjects:

(1) Whether the collection of information is necessary for the proper functioning of the BLM, including whether the information will have practical utility;

(2) The accuracy of the BLM's estimate of the burden of collecting the information, including the validity of the methodology and assumptions used;

(3) The quality, utility and clarity of the information to be collected; and

(4) How to minimize the information collection burden on those who are to respond, including the use of appropriate automated, electronic, mechanical, or other forms of information technology.

Please send comments to the addresses listed under **ADDRESSES**. Please refer to OMB control number 1004–0185 in your correspondence. Before including your address, phone number, e-mail address, or other personal identifying information in your comment, you should be aware that your entire comment—including your personal identifying information—may be made publicly available at any time. While you can ask us in your comment to withhold your personal identifying information from public review, we cannot guarantee that we will be able to do so.

Jean Sonneman,

Acting Information Collection Clearance Officer.

[FR Doc. E9–17875 Filed 7–24–09; 8:45 am]

BILLING CODE 4310–84–P

DEPARTMENT OF THE INTERIOR

National Park Service

White-tailed Deer Management Plan, Final Environmental Impact Statement, Valley Forge National Historical Park, PA

AGENCY: National Park Service, Department of the Interior.

ACTION: Notice of Availability of the Final Environmental Impact Statement for the White-tailed Deer Management Plan, Valley Forge National Historical Park.

SUMMARY: Pursuant to the National Environmental Policy Act of 1969, as amended, the National Park Service (NPS) announces the availability of the Final Environmental Impact Statement (FEIS) for the White-tailed Deer Management Plan for Valley Forge National Historical Park, Pennsylvania. The purpose of the FEIS is to evaluate a range of alternatives for establishing a white-tailed deer management plan that supports forest regeneration and provides for long-term protection, preservation, and restoration of native vegetation and other natural and cultural resources. The FEIS evaluates four alternatives for managing white-tailed deer in the park. Alternatives for response to chronic wasting disease (CWD) have been integrated into each deer management alternative to address the elevated risk of disease in proximity to the park and because of the efficiencies and cost savings associated with incorporating CWD response into the deer management plan. The FEIS describes and analyzes the environmental impacts of three action alternatives and the no-action alternative. The FEIS responds to, and incorporates, agency and public comments received on the Draft White-tailed Deer Management Plan/Environmental Impact Statement, which was available for public review from December 19, 2008 through February 17, 2009. Agency and public comments with NPS responses are provided as Appendix F of the FEIS. When approved, the plan will guide deer management actions over the next 15 years.

DATES: No sooner than 30 days following publication of the Environmental Protection Agency's Notice of Availability of the FEIS in the **Federal Register**, the Northeast Regional Director will sign a Record of Decision that will document NPS approval of the FEIS and identify the alternative selected for implementation.

ADDRESSES: The White-tailed Deer Management Plan/FEIS will be available online through the NPS Planning, Environment, and Public Comment (PEPC) Web site at *http://parkplanning.nps.gov/vafo*. A limited number of hard copies will be available at the Valley Forge National Historical Park Visitor Center located at the intersection of North Gulph Road and Route 23 and at the Lower Providence Community Library (50 Parklane Drive, Eagleville, PA 19403–1171), Tredyffrin Public Library (582 Upper Gulph Road, Strafford-Wayne, PA 19087–2052), Phoenixville Public Library (183 Second Avenue, Phoenixville, PA 19460), Upper Merion Township Library (175 West Valley Forge Road, King of Prussia, PA 19406) and Montgomery County-Norristown Public Library (1001 Powell Street, Norristown, PA 19401). You may request a hardcopy or CD by contacting Kristina M. Heister, Valley Forge National Historical Park, at the phone or address provided below.

FOR FURTHER INFORMATION CONTACT: Kristina M. Heister, Natural Resource Manager, Valley Forge National Historical Park, 1400 North Outer Line Drive, King of Prussia, PA 19406, (610) 783–0252.

SUPPLEMENTARY INFORMATION: Development of the Environmental Impact Statement for the White-tailed Deer Management Plan for Valley Forge National Historical Park was initiated in 2006, pursuant to the 2006 House Appropriations Report (HR 109–465): ''The public has been patient as the NPS has worked through its process in regard to management of the over-abundance of white-tailed deer at the park. Within existing funds, NPS is directed to begin the environmental impact statement for deer management. The Committee expects that the plan will be funded fully so that it can be completed in fiscal year 2008. The Committee further expects that implementation of the selected action will begin immediately upon signing of the Record of Decision.''

A Notice of Intent to prepare a deer management plan and environmental impact statement was published in the **Federal Register** on September 7, 2006. Extensive agency and public scoping was conducted and the Draft White-Tailed Deer Management Plan/Environmental Impact Statement (DEIS) was released on December 19, 2008 for a 60-day public review period that ended on February 17, 2009. Two public meetings were held in January, 2009. During the comment period, 1,168 pieces of correspondence were received, from which 3,884 comments were derived. Agency and public comments received on the DEIS were carefully reviewed and incorporated into the FEIS.

The FEIS evaluates four alternatives for managing white-tailed deer in the park. The document describes and analyzes the environmental impacts of three action alternatives and the no-action alternative.

Alternatives: Alternative A (no action) would continue the existing deer management activities of monitoring deer population size and vegetation, small scale fencing of selected vegetation, removal of deer killed on roadways, public education, coordination with the Pennsylvania Game Commission, and continuation of limited CWD surveillance; no new deer management actions would be implemented.

Alternative B would combine several non-lethal actions, including large-scale rotational fencing of 10% to 15% of the park's forested area and reproductive control of does to gradually reduce deer population in the park. Chronic wasting disease surveillance would include live testing (via tonsillar biopsy) and removal of CWD-positive individuals.

Under Alternative C, qualified federal employees or contractors would directly reduce the deer population in the park through sharpshooting and through capture and euthanasia, where appropriate. CWD response would include rapid reduction of the deer population to the target deer density and the potential for a one-time

reduction action to not less than 10 deer per square mile through sharpshooting and through capture and euthanasia. These actions would be taken for the purposes of assessing disease presence, prevalence, and distribution. These actions may also minimize the likelihood of CWD becoming established, minimize the likelihood of amplification and spread if the disease is introduced, and promote elimination of CWD, if possible.

Alternative D, the NPS Preferred Alternative, would combine actions of Alternative C to directly reduce the deer population with reproductive control of does as under Alternative B to maintain population levels. CWD response actions would be the same as described for Alternative C.

Changes to the FEIS as a result of public comment on the DEIS consist of factual updates to baseline data and clarifications added to the text. No changes were made to the preferred alternative or other alternatives evaluated nor was the outcome of the impact analysis changed. Agency and public comments received on the DEIS with NPS responses are provided as Appendix F of the FEIS.

Dennis R. Reidenbach,

Regional Director, Northeast Region, National Park Service.

[FR Doc. E9–17807 Filed 7–24–09; 8:45 am]

BILLING CODE 4310–DJ–P

DEPARTMENT OF THE INTERIOR

Bureau of Land Management

[LLWO350000.L14300000]

Notice of Extension of Public Comment Period for Programmatic Environmental Impact Statement To Develop and Implement Agency-Specific Programs for Solar Energy Development

AGENCY: Bureau of Land Management, Interior.

ACTION: Notice of extension.

SUMMARY: The Department of Energy and the Bureau of Land Management (BLM) (the Agencies) are extending the public comment period for the Programmatic Environmental Impact Statement to Develop and Implement Agency-Specific Programs for Solar Energy Development (Solar PEIS). The Solar PEIS includes BLM-administered lands in the States of Arizona, California, Colorado, New Mexico, Nevada, and Utah. A notice published in the **Federal Register** on June 30, 2009 [74 FR 31307] provided for a public comment period ending on July 30, 2009.

DATES: Several individuals and organizations have requested an extension of the comment period. The Agencies have decided to act in accordance with these requests; therefore, comments on the solar energy study areas will now be accepted through September 14, 2009. Comments received or postmarked after September 14, 2009 will be considered to the extent practicable.

ADDRESSES: You may submit written comments by the following methods:

- *Electronically, using the online comment form available on the project Web site: http://solareis.anl.gov.* This is the preferred method of commenting.
- *In writing, addressed to:* Solar Energy PEIS, Argonne National Laboratory, 9700 S. Cass Avenue—EVS/900, Argonne, IL 60439.

FOR FURTHER INFORMATION CONTACT: For further information contact: Linda Resseguie, BLM Washington Office, *linda_resseguie@blm.gov,* 202–452–7774; or Lisa Jorgensen, Department of Energy, Golden Field Office, *lisa.jorgensen@go.doe.gov,* 303–275–4906. You may also visit the Solar PEIS Web site at *http://solareis.anl.gov.*

Mike Pool,

Acting Director, Bureau of Land Management.

[FR Doc. E9–17782 Filed 7–24–09; 8:45 am]

BILLING CODE 4310–84–P

DEPARTMENT OF THE INTERIOR

Bureau of Reclamation

Madera Irrigation District Water Supply Enhancement Project

AGENCY: Bureau of Reclamation, Interior.

ACTION: Notice of availability and notice of public meeting for the Draft Environmental Impact Statement (Draft EIS).

SUMMARY: The Bureau of Reclamation (Reclamation) has made available for public review and comment the Draft EIS for the Madera Irrigation District Water Supply Enhancement Project (MID WSEP). Reclamation proposes to approve the banking of up to 55,000 acre-feet per year of Central Valley Project (CVP) water outside the MID service area and the alteration of Reclamation-owned facilities. The total banking capacity of the MID WSEP is 250,000 acre-feet.

The draft EIS evaluates the potential environmental effects of the proposed MID WSEP on the property known as Madera Ranch (west of the City of Madera, Madera County, CA), and the improvements to associated facilities needed to operate the MID WSEP. Portions of the 24.2 Canal, Section 8 Canal, Main Number 1 Canal, Cottonwood Creek, and Gravelly Ford Canal would be enlarged, extended, or improved.

The MID WSEP would be completed in two phases. Phase 1 would involve recharge-related facilities only. Phase 2 would involve supplemental recharge facilities and facilities for recovery of banked water. The draft EIS addresses both phases.

DATES: Submit written comments on the draft environmental document on or before September 25, 2009.

A public meeting will be held on August 27, 2009 from 5 to 6:30 p.m. in Madera, CA to discuss the purpose and content of the draft environmental document and to provide the public an opportunity to comment on the draft environmental document. Written comments will also be accepted at the public meeting.

ADDRESSES: The public meeting will be held at Madera Irrigation District Office, 2152 Road 28¼, Madera, CA 93637.

Written comments on the Draft EIS should be addressed to Ms. Patricia Clinton, Bureau of Reclamation, 1243 N Street, Fresno, CA 93721–1831.

Copies of the draft document may be requested from Ms. Patricia Clinton at the above address, by calling 559–487–5127, TDD 559–487–5933, or at *pclinton@usbr.gov.* See **SUPPLEMENTARY INFORMATION** section for locations where copies of the Draft EIS are available.

FOR FURTHER INFORMATION CONTACT: Ms. Patricia Clinton, Bureau of Reclamation at the phone numbers or e-mail address above.

SUPPLEMENTARY INFORMATION: Groundwater levels in the Madera subbasin have experienced steep declines. These conditions have made it increasingly expensive for farmers to pump groundwater. In addition, in many years, MID has been unable to deliver sufficient surface water to farmers either because surface water is available primarily during the early months of the year when irrigation demand is low, or surface water is available only for short periods of time during the growing season.

To increase water storage, enhance water supply reliability and flexibility for current and future water demand and reduce local overdraft, MID proposes to implement the WSEP. MID would bank CVP water and other imported water in the aquifer underlying Madera Ranch. In wet years,

water would be banked in the overdrafted aquifer for use in dry years. To help alleviate the overdraft condition, 10 percent of the water banked would remain in the aquifer.

The Draft EIS considers the direct, indirect, and cumulative effects on the physical, natural, and human environment that may result from the construction and operation of a water bank on Madera Ranch. The Draft EIS addresses potentially significant environmental issues and recommends adequate and feasible mitigation measures to reduce or eliminate significant environmental impacts, where possible. Three banking alternatives as well as the no action alternative are addressed.

Copies of the Draft EIS are available for public review at the following locations:

- Bureau of Reclamation, Denver Office Library, Building 67, Room 167, Denver Federal Center, 6th and Kipling, Denver, CO 80225.
- Natural Resources Library, U.S. Department of the Interior, 1849 C Street, NW., Main Interior Building, Washington, DC 20240–0001.
- Bureau of Reclamation, Mid-Pacific Regional Office Library, 2800 Cottage Way, W–1825, Sacramento, CA 95825–1898.
- Bureau of Reclamation, South-Central California Area Office, 1243 N Street, Fresno, CA 93721–1831.
- Madera Library, 121 North G Street, Madera, CA 93637.
- Chowchilla Library, 300 Kings Avenue, Chowchilla, CA 93610.
- Madera Ranchos Library, 37167 Ave 12 Suite 4C, Madera, CA 93636.
- Fresno County Public Library, 2420 Mariposa, Fresno, CA 93721.
- Clovis Regional Library, 1155 Fifth Street, Clovis, CA 93612.

If special assistance is required at the public meeting, please contact Ms. Patricia Clinton at 559–487–5127, TDD 559–487–5933, or at *pclinton@usbr.gov* no less than five working days before the meeting to allow Reclamation to secure the needed services. If a request cannot be honored, the requestor will be notified.

Before including your name, address, phone number, e-mail address, or other personal identifying information in your comment, you should be aware that your entire comment—including your personal identifying information—may be made publicly available at any time. While you can ask us in your comment to withhold your personal identifying information from public review, we cannot guarantee that we will be able to do so.

Dated: March 23, 2009.

Richard M. Johnson,

Acting Regional Director, Mid-Pacific Region.

Editorial Note: This document was received in the Office of the Federal Register on July 22, 2009.

[FR Doc. E9–17793 Filed 7–24–09; 8:45 am]

BILLING CODE 4310–MN–P

DEPARTMENT OF THE INTERIOR

Bureau of Land Management

[LLORB06000 L14300000.ER0000.241A000; HAG 9–0188]

Notice of Intent To Prepare an Environmental Impact Statement and Possible Resource Management Plan Amendments for the North Steens Transmission Line Project in Harney County, OR

AGENCY: Bureau of Land Management, Interior.

ACTION: Notice of Intent.

SUMMARY: The Bureau of Land Management (BLM), Burns District Office, Oregon, intends to prepare an Environmental Impact Statement (EIS) and to solicit public comments pursuant to section 102(2)(C) of the National Environmental Policy Act (NEPA) of 1969 in response to a right-of-way application filed by Echanis, LLC, for the proposed North Steens Transmission Line Project. The project will involve BLM-administered public lands, private lands, and lands administered by the U.S. Fish and Wildlife Service, Malheur National Wildlife Refuge, Harney County, Oregon.

DATES: This notice initiates public scoping. Scoping comments shall be submitted on or before August 26, 2009.

The BLM will announce public scoping meetings to identify relevant issues through local news media, newsletters, and the BLM Web site (*http://www.blm.gov/or/districts/burns*) at least 15 days prior to each meeting. Public meetings will tentatively be held in Burns, Bend, Diamond, and Frenchglen, Oregon, and other communities if the interest warrants. We will provide additional opportunities for public participation upon publication of the Draft EIS, including a public comment period.

ADDRESSES: You may submit comments to the North Steens Transmission Line Project Lead, BLM Burns District Office, 28910 Highway 20 West, Hines, Oregon 97738; Fax (541) 573–4411; or e-mail: *OR_Burns_NS_Transmission_Line_EIS@blm.gov.*

FOR FURTHER INFORMATION CONTACT: For further information and/or to have your name added to our mailing list, contact the North Steens Transmission Line Project Lead, BLM Burns District Office, 28910 Highway 20 West, Hines, Oregon 97738; (541) 573–4400; Fax (541) 573–4411; or e-mail: *OR_Burns_NS_Transmission_Line_EIS@blm.gov.*

SUPPLEMENTARY INFORMATION: In December 2008, Harney Electric Cooperative filed a preliminary application for a right-of-way with the BLM for construction, operation, maintenance, and termination of a 29-mile long 230 kilovolt (kV) transmission line that would connect the Echanis Wind Energy Project with Harney Electric Cooperative's existing transmission system near Diamond Junction, Oregon. The application was subsequently assigned to Echanis, LLC, a subsidiary of Columbia Energy Partners, LLC, who proposes to fund, construct, and oversee the initial development and commissioning of the project. Upon commission, the transmission line would be deeded to Harney Electric Cooperative for long-term operation and maintenance as part of their electric transmission and distribution system in southeast Oregon and northern Nevada. The purpose of the project would be to transmit up to approximately 103.5 megawatts (MW) of renewable energy from the Echanis Wind Energy Project to target service areas in the Pacific Northwest. The proposed transmission project would also be designed with additional capacity to conduct power generated from other possible renewable energy generation facilities that may be planned in the future. The proposed transmission line would begin at the Echanis Wind Energy Project southeast of Diamond, Oregon, on private lands, and end at Harney Electric Cooperative's existing 115 kilovolt (kV) line near Diamond Junction. The proposed line would cross approximately 19 miles of private land, 9 miles of public land administered by the BLM, and 1.3 miles of land on the Malheur National Wildlife Refuge managed by the U.S. Fish and Wildlife Service, including a span over the Blitzen Valley of approximately 1,800 feet. Echanis, LLC, proposes to utilize steel structures approximately 90 to 140 feet in height with average spans between towers of 700 feet. The proposed right-of-way would be 150 feet wide. Additional temporary work space would also be required during construction for material storage, line tensioning sites, and construction access.

The Echanis Wind Energy Project is to be located entirely within private lands. A conditional use permit for the wind project was issued to Columbia Energy Partners by Harney County in April 2007. Although wind testing and project feasibility studies are currently ongoing on private, State, and Federal lands in several areas throughout Harney County, the Echanis project is the only wind energy project approved for development, to date, by Harney County or any other jurisdiction. Currently there are no transmission facilities available in the Diamond/North Steens area to transport electrical power produced from the Echanis Wind Energy Project to the existing transmission grid.

Public scoping will aid in determining relevant issues influencing the scope of the environmental analysis, including alternatives, and guide the process for developing the EIS. At present, the BLM has identified the following preliminary issues: sage-grouse, migratory birds, recreation, local and regional social/economic conditions, visual resource management, and special management areas including the U.S. Fish and Wildlife Service, Malheur National Wildlife Refuge and the Steens Mountain Cooperative Management and Protection Area.

An interdisciplinary approach will be used to develop the EIS in order to consider the variety of resource issues and concerns identified through the scoping process. Resources addressed in the EIS process will include (but are not limited to) air quality, American Indian traditional practices, biological soil crusts, cultural heritage, fire management, fisheries, grazing management, migratory birds, minerals, noxious weeds, recreation, soils, social/economic values, special status species, transportation/roads, vegetation, visual resources, water quality, riparian zones, wildlife, and wilderness values. The BLM will analyze the proposed action and no action alternatives, as well as other reasonable alternatives to the proposed transmission line location, access routes, and construction/design methods.

Authorization of this proposal may require amendments to one or more Resource Management Plans (RMP). By this notice, the BLM is complying with requirements in 43 CFR 1610.2(c) to notify the public of potential RMP amendments, predicated on the findings of the EIS. If RMP amendments are necessary, the BLM will integrate the RMP process with the NEPA process for this project.

Any authorization of the project on Malheur National Wildlife Refuge lands would require a formal determination by the U.S. Fish and Wildlife Service that the proposal is compatible with Refuge purposes. This compatibility determination would be incorporated into the NEPA process for this project.

The BLM is the lead Federal agency for the NEPA analysis process and preparation of the EIS. U.S. Fish and Wildlife Service-Malheur National Wildlife Refuge and Harney County have agreed to be cooperating agencies in the EIS. Other potential cooperating agencies identified at this time include the U.S. Fish and Wildlife Service-Bend Field Office, Burns Paiute Tribe, and State of Oregon Department of Fish and Wildlife. Other cooperating agencies having specific expertise or interests in the project could also be invited to participate based on the outcome of scoping.

You may submit comments on issues in writing to the BLM at any public scoping meeting, or you may submit them to the BLM using one of the methods listed in the **ADDRESSES** section above. Comments, including the names and addresses of respondents will be available for public review at the BLM Burns District Office during regular business hours 7:45 a.m. to 4:30 p.m., Monday through Friday, except holidays, and may be published as part of the EIS. Before including your address, phone number, e-mail address, or other personal identifying information in your comment, you should be aware that your entire comment—including your personal identifying information—may be made publicly available at any time. While you can ask us in your comment to withhold your personal identifying information from public review, we cannot guarantee that we will be able to do so. All submissions from organizations and businesses, and from individuals identifying themselves as representatives or officials of organizations or businesses, will be available for public inspection in their entirety.

(Authority: 43 CFR part 2800)

Joan Suther,

Acting Burns District Manager.

[FR Doc. E9–17780 Filed 7–24–09; 8:45 am]

BILLING CODE 4310–33–P

DEPARTMENT OF THE INTERIOR

Bureau of Land Management

[CACA 49834; L51010000.ER0000 LLCAD09000 LVRWB09B3160]

Notice of Intent To Prepare a Joint Environmental Impact Statement and Final Environmental Impact Report for the Southern California Edison, Eldorado-Ivanpah Transmission Project; California, Nevada

Agency: Bureau of Land Management, Interior.

ACTION: Notice of Intent.

SUMMARY: In compliance with the National Environmental Policy Act of 1969 (NEPA), as amended, and the California Environmental Quality Act of 1970 (CEQA), the Department of the Interior, Bureau of Land Management (BLM), together with the California Public Utilities Commission (CPUC), intend to prepare an Environmental Impact Statement/Environmental Impact Report (EIS/EIR) on the impacts of the Eldorado-Ivanpah Transmission Project (EITP).

DATES: This notice initiates the public participation and scoping processes for the EIS. A public scoping period of at least 30 days is hereby announced, and at least one public meeting has been announced through the local news media, newspapers, and BLM's Web page (*http://www.blm.gov/ca/st/en/fo/needles.html*). During the public scoping period, the BLM solicits public comment on issues, concerns, and opportunities that should be considered in the analysis of the proposed action. Comments on issues, potential impacts, or suggestions for additional alternatives may be submitted in writing to the address listed below. In order to be included in the Draft EIS all comments must be received prior to the close of the scoping period or 15 days after the last public meeting, whichever is later. Additional opportunities for public participation and formal comment will occur when the Draft EIS/Draft EIR is issued.

ADDRESSES: Comments and other correspondence should be sent to the BLM Needles Office, attention George R. Meckfessel, Planning and Environmental Coordinator, Needles Field Office, 1303 South U.S. Highway 95, Needles, California, 92363–4228, or by fax at (760) 326–7099 or by e-mail at *mailto:ca690@ca.blm.gov* attention EITP. Documents pertinent to this proposal, including comments of respondents, will be available for public review at the BLM Needles Field Office

during regular business hours of 7:30 a.m. to 4 p.m., Monday through Friday, excluding holidays.

FOR FURTHER INFORMATION CONTACT: For further information and/or to have your name added to our mailing list, contact Tom Hurshman, Project Manager, 2465 South Townsend Ave., Montrose, CO 81401, Phone (970) 240–5345, fax (970) 240–5368, or e-mail *Tom_Hurshman@blm.gov.*

SUPPLEMENTARY INFORMATION: The applicant, Southern California Edison, has requested a right-of-way (ROW) authorization to construct a proposed electric transmission line and associated facilities on public lands located in San Bernardino County, California, and Clark County, Nevada. The EIS/EIR will analyze the site-specific impacts to the environment resulting from the proposed project. The CPUC is the lead State of California agency for the licensing of electric transmission facilities and, in the present case, for compliance with the requirements of CEQA. BLM will utilize and coordinate the NEPA commenting process to satisfy the public involvement process for Section 106 of the National Historic Preservation Act (NHPA) (16 U.S.C. 470f) as provided for in 36 CFR 800.2(d)(3).

Southern California Edison has applied for a ROW authorization to upgrade and replace an existing 115 kV electric transmission line on public lands with a new double circuit 220 kV electric transmission line. The proposed transmission line would handle projected electricity produced from several renewable energy project proposals in and around the Ivanpah Valley, including the Ivanpah Solar Energy Generation System planned by Solar Partners, LLC. The proposed electric transmission line and a new substation would be constructed within an existing designated utility corridor. The public lands are managed by BLM in accordance with the California Desert Conservation Area (CDCA) Plan and the Las Vegas Field Office Resource Management Plan (RMP). The segment of electric transmission line to be replaced is approximately 36 miles long and originates at the existing Eldorado Substation in T. 25 S., R. 62 E., Sec. 1, Mount Diablo PM, and terminates at the proposed Ivanpah Substation in T. 16 N., R. 14 E., Sec. 4, San Bernardino PM.

In addition to the electric transmission line, the applicant requires telecommunications facilities to operate the substation. Primary telecommunications would be provided with an optical overhead ground wire constructed on the proposed electric transmission line, and redundant telecommunications would be established by construction of an independent fiber optics cable that will be located on other existing electric transmission towers owned by the applicant.

BLM will consider approval of the proposed Project in a manner that avoids or reduces impacts to public lands. This action is consistent with Federal law and BLM's policy allowing the use of public lands for the generation and transmission of electrical energy from renewable energy projects pursuant to Title V of the Federal Land Policy and Management Act (FLPMA) and Section 211 of the Energy Policy Act of 2005 (119 Stat. 594, 660). BLM has an established process to respond to applications for ROW's for major utilities while protecting the environment. The CDCA Plan, the Las Vegas Field Office RMP, and the FLPMA recognize that public lands will be managed for multiple uses and emphasize the use of ROW corridors.

The EIS/EIR will describe and analyze the project as proposed and will include: (1) Measures to avoid, minimize, or mitigate impacts on the environment; (2) alternative routes and locations for facilities; and (3) the ''No Action'' alternative (no upgrades to the existing electric transmission line). Through public scoping, BLM expects to identify various issues, potential impacts, and mitigation measures. As proposed, the electric transmission line has been sited to take advantage of existing designated ROW corridors, which are areas identified by BLM land use plans as suitable for ROW development.

BLM has identified a potential list of issues that will need to be addressed in this analysis including but not limited to: Social and economic impacts, including impacts to the public from traffic; ground and surface water quantity and quality impacts; plant and animal species including special status species; cultural resources; and visual resource impacts. If approved, the electric transmission line project on public lands would be authorized in accordance with the FLPMA and federal regulations at Title 43 Code of Federal Regulations Part 2800.

You may submit comments in writing at the public scoping meeting, by mail, or via e-mail (see **ADDRESSES** section above). Before including your address, phone number, email address, or other personal identifying information in your comment, you should be aware that your entire comment—including your personal identifying information—may be made publicly available at any time. While you can ask us in your comment to withhold your personal identifying information from public review, we cannot guarantee that we will be able to do so.

Tom Zale,

Deputy State Director, Natural Resources (acting), California State Office.

[FR Doc. E9–17784 Filed 7–24–09; 8:45 am]

BILLING CODE 4310–40–P

DEPARTMENT OF THE INTERIOR

[LLCAD00000 L19900000.AL 0000]

Meeting of the California Desert District Advisory Council

AGENCY: Bureau of Land Management, Interior.

ACTION: Notice of public meeting.

SUMMARY: Notice is hereby given, in accordance with Public Laws 92–463 and 94–579, that the California Desert District Advisory Council to the Bureau of Land Management, U.S. Department of the Interior, will meet in formal session on Friday, August 28, 2009, from 1 p.m. to 4:30 p.m., and on Saturday, August 29, from 8 a.m. to 4 p.m. at the Riverside Marriott, 3400 Market St., Riverside, CA 92501.

Agenda topics will include updates by Council members and reports from the BLM District Manager and five field office managers. Additional agenda topics may include updates on legislation, renewable energy, the wild horse and burro program, DesertXpress, and grazing. Final agenda items will be posted on the BLM California State Web site at *http://www.blm.gov/ca/news/rac.html.*

SUPPLEMENTARY INFORMATION: All California Desert District Advisory Council meetings are open to the public. Public comment for items not on the agenda will be scheduled at the beginning of the meeting Friday afternoon, as well as Saturday morning. Time for public comment may be made available by the Council Chairman during the presentation of various agenda items, and is scheduled at the end of the meeting for topics not on the agenda.

While the meetings are tentatively scheduled to conclude at 4:30 p.m. on Friday and 4 p.m. on Saturday, they could conclude earlier should the Council conclude its presentations and discussions. Therefore, members of the public interested in a particular agenda item or discussion should schedule their arrival accordingly.

Written comments may be filed in advance of the meeting for the

California Desert District Advisory Council, c/o Bureau of Land Management, External Affairs, 22835 Calle San Juan de Los Lagos, Moreno Valley, CA 92553. Written comments also are accepted at the time of the meeting and, if copies are provided to the recorder, will be incorporated into the minutes.

FOR FURTHER INFORMATION CONTACT: David Briery, BLM California Desert District External Affairs, 951.697.5220.

Dated: July 14, 2009.

Steven J. Borchard,

District Manager.

[FR Doc. E9–17783 Filed 7–24–09; 8:45 am]

BILLING CODE P

DEPARTMENT OF THE INTERIOR

Bureau of Land Management

[MT–020–1010–PO]

Notice of Public Meeting, Eastern Montana Resource Advisory Council Meeting

AGENCY: Bureau of Land Management, Interior, Montana, Billings and Miles City Field Offices.

ACTION: Notice of public meeting.

SUMMARY: In accordance with the Federal Land Policy and Management Act (FLPMA) and the Federal Advisory Committee Act of 1972 (FACA), the U.S. Department of the Interior, Bureau of Land Management (BLM) Eastern Montana Resource Advisory Council (RAC), will meet as indicated below.

DATES: The next regular meeting of the Eastern Montana Resource Advisory Council will be held on August 27, 2009 in Miles City, MT. The meeting will start at 8 a.m. and adjourn at approximately 3:30 p.m. When determined, the meeting location will be announced in a news release.

FOR FURTHER INFORMATION CONTACT: Mark Jacobsen, Public Affairs Specialist, BLM Miles City Field Office, 111 Garryowen Road, Miles City, Montana, 59301. Telephone: (406) 233–2831.

SUPPLEMENTARY INFORMATION: The 15-member Council advises the Secretary of the Interior through the Bureau of Land Management on a variety of planning and management issues associated with public land management in Montana. At these meetings, topics will include: Miles City and Billings Field Office manager updates, subcommittee briefings, work sessions and other issues that the council may raise. All meetings are open to the public and the public may present written comments to the Council. Each formal Council meeting will also have time allocated for hearing public comments. Depending on the number of persons wishing to comment and time available, the time for individual oral comments may be limited. Individuals who plan to attend and need special assistance, such as sign language interpretation, tour transportation or other reasonable accommodations should contact the BLM as provided above.

Dated: July 14, 2009.

M. Elaine Raper,

Field Manager.

[FR Doc. E9–17787 Filed 7–24–09; 8:45 am]

BILLING CODE 4310–$$–P

DEPARTMENT OF THE INTERIOR

National Park Service

National Register of Historic Places; Weekly Listing of Historic Properties

Pursuant to (36 CFR 60.13(b,c)) and (36 CFR 63.5), this notice, through publication of the information included herein, is to apprise the public as well as governmental agencies, associations and all other organizations and individuals interested in historic preservation, of the properties added to, or determined eligible for listing in, the National Register of Historic Places from May 25 to May 29, 2009.

For further information, please contact Edson Beall via: United States Postal Service mail, at the National Register of Historic Places, 2280 National Park Service, 1849 C St. NW., Washington, DC 20240; in person (by appointment), 1201 Eye St., NW., 8th floor, Washington, DC 20005; by fax, 202–371–2229; by phone, 202–354–2255; or by e-mail, *Edson_Beall@nps.gov.*

Dated: July 21, 2009.

J. Paul Loether,

Chief, National Register of Historic Places/ National Historic Landmarks Program.

KEY: State, County, Property Name, Address/Boundary, City, Vicinity, Reference Number, Action, Date, Multiple Name

ARKANSAS

Calhoun County

Hampton Cemetery, S. of the jct of US 278 W. and 1st St., Hampton, 09000340, LISTED, 5/27/09

ILLINOIS

Cook County

B.F. Goodrich Company Showroom, 1925 S. Michigan Ave., Chicago, 09000347, LISTED, 5/28/09 (Motor Row, Chicago, Illinois MPS)

INDIANA

Putnam County

Putnam County Bridge 137, Co. Rd. 100 over Big Walnut Creek, Greencastle, 65009969, *DETERMINED ELIGIBLE, 5/27/09

KANSAS

Sedgwick County

Old Mission Mausoleum, 3414 E. 21st St., Wichita, 09000352, LISTED, 5/28/09

MASSACHUSETTS

Plymouth County

WPA Field House and Pump Station, 7–19 Henry Turner Bailey Rd., Scituate, 09000355, LISTED, 5/29/09

MASSACHUSETTS

Worcester County

West Main Street Historic District (Boundary Increase III), Portions of E. Main St., High St., Lincoln St., Milk St., Prospect and Spring Sts., Westborough, 09000196, LISTED, 5/29/09

NEW YORK

Broome County

Rivercrest Historic District, 4601–4609 Vestal Rd. & 4613–4729 Vestal Pkwy. E., Vestal, 09000208, DETERMINED ELIGIBLE, 5/28/09

NEW YORK

Kings County

Beth El Jewish Center of Flatbush, 1981 Homecrest Ave., Brooklyn, 09000377, LISTED, 5/29/09

NEW YORK

Queens County

Fort Tilden Historic District, Gateway National Recreation Area, Gateway National Recreation Area, 65009972, *DETERMINED ELIGIBLE, 5/12/09

NEW YORK

Richmond County

Jacques Marchais Center of Tibetan Art, 338 Lighthouse Ave., Staten Island, 09000379, LISTED, 5/29/09

OKLAHOMA

Ottawa County

Miami Downtown Historic District, Roughly 100 block of N. Main, 000 block of S. Main, 000 blocks of Central Ave. and 000 block of SE. A St., Miami, 09000357, LISTED, 5/29/09

OREGON

Benton County

Willamette Community and Grange Hall, 27555 Greenberry Rd., Corvallis vicinity, 09000359, LISTED, 5/28/09

OREGON

Washington County

Painter's Woods Historic District, Centered on 15th Ave. and Birch Sts., including portions of 14th, 13th, 12th Aves., Cedar

and Douglas Sts., Forest Grove, 09000360, LISTED, 5/28/09

PUERTO RICO

Caguas Municipality

Puente No. 6, SR 798, Km. 1.0, Rio Canas Ward, Caguas vicinity, 09000361, LISTED, 5/28/09 (Historic Bridges of Puerto Rico MPS)

SOUTH CAROLINA

Abbeville County

Lindsay Cemetery, Lindsay Cemetery Rd., Due West vicinity, 09000364, LISTED, 5/27/09

VIRGINIA

Loudoun County

Round Hill Historic District, Area within the Round Hill town limits that is bounded roughly by VA 7 to the S., Locust St. to the W., Bridge on E, Round Hill, 09000366, LISTED, 5/28/09

WASHINGTON

Kitsap County

Coder-Coleman House, 904 Highland Ave., Bremerton, 09000367, LISTED, 5/28/09

*Denotes FEDERAL DETERMINATION OF ELIGIBILITY

[FR Doc. E9–17822 Filed 7–24–09; 8:45 am]

BILLING CODE P

DEPARTMENT OF THE INTERIOR

National Park Service

National Register of Historic Places; Notification of Pending Nominations and Related Actions

Nominations for the following properties being considered for listing or related actions in the National Register were received by the National Park Service before July 11, 2009.

Pursuant to § 60.13 of 36 CFR Part 60 written comments concerning the significance of these properties under the National Register criteria for evaluation may be forwarded by United States Postal Service, to the National Register of Historic Places, National Park Service, 1849 C St., NW., 2280, Washington, DC 20240; by all other carriers, National Register of Historic Places, National Park Service,1201 Eye St., NW., 8th floor, Washington, DC 20005; or by fax, 202–371–6447. Written or faxed comments should be submitted by August 11, 2009.

J. Paul Loether,

Chief, National Register of Historic Places/ National Historic Landmarks Program.

HAWAII

Hawaii County

Mauna Loa Road, Hawaii Volcanoes National Park, Hilo, 09000620

IOWA

Madison County

Seerley, William and Mary (Messersmith) Barn and Milkhouse—Smokehouse, 1840 137th La., Earlham, 09000621

MINNESOTA

McLeod County

Komensky School, 19981 Major Ave., Hutchinson, 09000622

Ramsey County

O'Donnell Shoe Company Building, 509 Sibley St., St. Paul, 09000623

MISSISSIPPI

Lee County

Carnation Milk Plant, 520 Carnation St., Tupelo, 09000624

Marion County

Columbia North Residential Historic District, Roughly bounded by High School and N. Main St. on the W. and Park Ave. and Branton Ave. on the E., Columbia, 09000625

MISSOURI

Pettis County

Sedalia Commercial Historic District (Boundary Increase I), 104–120 E. 5th St., Sedalia, 09000626

St. Louis Independent City

Stickney, William A., Cigar Company Building, 209 N. 4th St., St. Louis, 09000627

NEW YORK

Broome County

Wells, J. Stuart, House, 71 Main St., Binghamton, 09000628

Chautauqua County

Wellman Building, The, 101–103 W. 3rd St. & 215–217 Cherry St., Jamestown, 09000629

Erie County

Lafayette Avenue Presbyterian Church, 875 Elmwood Ave., Buffalo, 09000630

St. Francis Xavier Roman Catholic Parish Complex, 157 East St., Buffalo, 09000631

Kings County

Brooklyn Trust Company Building, 177 Montague St., Brooklyn, 09000632

Lewis County

Pine Grove Community Church, Austin Rd. & Pine Grove Rd., Pine Grove, 09000633

New York County

Emerson, The, 554 W. 53rd St., New York, 09000634

Oneida County

von Steuben, Baron, Memorial Site, Starr Hill Rd., Remsen, 09000635

NORTH CAROLINA

Mecklenburg County

Huntersville Colored High School, 302 Holbrooks Rd., Huntersville, 09000636

Orange County

Murphy School, 3729 Murphy School Rd., Hillsborough, 09000637

Transylvania County

East Main Street Historic District, (Transylvania County MPS) 249–683 and 768 East Main St.; 6–7 Rice St.; St. Phillip's Ln.; 1–60 Woodside Dr.; and 33 Deacon Ln., Brevard, 09000638

UTAH

Summit County

O'Mahony Dining Car No. 1107, 981 W. Weber Canyon Rd., Oakley, 09000639

VIRGINIA

Lunenburg County

Fort Mitchell Depot, 5570–5605 Fort Mitchell Dr., Fort Mitchell, 09000640

Newport News Independent City

Simon Reid Curtis House, 10 Elmhurst St., Newport News, 09000641

Shenandoah County

Bowman-Zirkle Farm, 12097 S. Middle Rd., Edinburg, 09000642

Clem-Kagey Farm, 291 Belgravia Rd., Edinburg, 09000643

Request REMOVAL has been made for the following resource:

OREGON

Coos County

Powers Hotel, 310 2nd St., Powers, 86001216

Request for MOVE has been made for the following resource

MARYLAND

Frederick County

Old National Pike Milestone No. 51, US 40 alternative: Beechtree Drive and Willow Tree Drive, Frederick, 75002107

[FR Doc. E9–17824 Filed 7–24–09; 8:45 am]

BILLING CODE P

DEPARTMENT OF THE INTERIOR

Bureau of Land Management

[LLCOF02000–L14300000.EU0000; COC–73560]

Notice of Realty Action: Proposed Non-Competitive (Direct) Sale of Public Land, Gilpin County, CO

AGENCY: Bureau of Land Management, Interior.

ACTION: Notice of realty action.

SUMMARY: The public lands described in this Notice consist of four small parcels ranging in size from 0.01 acres to 1.75 acres for a total of 1.87 acres in Gilpin County, Colorado. The parcels are being proposed for direct sale to Prospectors Run LLC at no less than the appraised fair market value (FMV) to resolve inadvertent, unauthorized use and

occupancy of the parcels. No significant resource values will be affected by disposal of these parcels from Federal ownership. The sale is consistent with Bureau of Land Management (BLM) policies and the BLM Colorado Northeast Resource Management Plan, dated September 16, 1986.

DATES: Interested persons may submit written comments concerning the proposed sale to the BLM at the address stated below. Comments must be received by the BLM not later than September 10, 2009.

ADDRESSES: Written comments regarding the proposed sale should be addressed to the Bureau of Land Management, Field Manager, Royal Gorge Field Office, 3028 East Main Street, Canon City, Colorado 81212.

FOR FURTHER INFORMATION CONTACT: Debbie Bellew, Realty Specialist, at (719) 269–8514 or by e-mail *dbellew@co.blm.gov.*

SUPPLEMENTARY INFORMATION: The following described parcels of public land are proposed for sale:

Sixth Principal Meridian

T. 3 S., R. 73 W.,
Sec. 11, lots 26, 28, 29, 30, and 32.

The areas described aggregate 1.87 acres in Gilpin County.

The parcels lie within Eureka Heights Village approximately 1 mile northwest of Central City, Colorado.

The authority for the sale is section 203 of the Federal Land Policy and Management Act (FLPMA) of October 21, 1976 (43 U.S.C. 1713) and regulations found at 43 CFR part 2710. The parcels are not required for Federal purposes and were identified for disposal in the BLM Northeast Colorado Resource Management Plan approved on September 18, 1986, and therefore meet the qualifications for disposal from Federal ownership. The disposal (sale) of the parcels would serve the public interest for private economic development, which outweighs other public objectives and values.

On July 27, 2009 the parcels will be segregated from all forms of appropriation under the public land laws, including the mining laws, except as to non-competitive (direct) sale as herein proposed. The segregative effect will terminate upon issuance of a patent, publication in the **Federal Register** of a termination of the segregation, or on July 27, 2011, whichever occurs first, unless the segregation period is extended by the BLM State Director, Colorado, in accordance with 43 CFR 2711.1–2(d) prior to the termination date. Upon publication of this notice and until completion of the sale, the BLM will not accept land use applications.

The parcels will be disposed of at no less than the appraised FMV. The FMV will be determined by an appraisal using the principles contained in the ''Uniform Appraisal Standards for Federal Land Acquisitions.'' The parcels described in this notice were identified for disposal in an approved land use plan in effect on July 25, 2000; therefore, proceeds from this sale will be deposited into the Federal Land Disposal Account authorized under section 206 of the Federal Land Transaction Facilitation Act, Public Law 106–248.

Regulations contained in 43 CFR 2711.3–3 make allowances for direct sales when a competitive sale is inappropriate and when the public interest would best be served by a direct sale, including a need to resolve inadvertent unauthorized use or occupancy of the lands. The fragmented land pattern in Gilpin County has resulted in numerous historical trespass situations on public lands. As to the parcels described in this Notice, the BLM has completed a cadastral survey of the public land boundaries to verify the unauthorized uses. In accordance with 43 CFR 2710.0–6 (c) (iii) and 43 CFR 2711.3–3(a), the BLM authorized officer finds that the public interest would be best served by resolving the inadvertent unauthorized use and occupancy of public lands managed by the BLM by direct sale to a landowner whose improvements occupy portions of the parcels and to protect existing equities in the land.

The inadvertent unauthorized use and occupancy involves landscaping and the encroachment of portions of retaining walls associated with the townhome development known as ''Eureka Heights Village.'' The initial use and occupancy began when Prospector's Run LLC built the improvements on public land during development of their private property. Access to the subject BLM parcels is off of Eureka Street. The sale would consolidate the public land parcels within the Eureka Heights Village development and resolve inadvertent unauthorized use and occupancy of public lands. Federal law requires purchasers to be citizens of the United States, 18 years of age or older; or, in the case of corporations, to be subject to the laws of any State or of the United States; a State, State instrumentality or political subdivision authorized to hold property or an entity legally capable of conveying lands or interests therein under the laws of the State of Colorado. The purchaser will be allowed 30 days from receipt of a written offer from the BLM to submit a deposit of at least 30 percent of the appraised FMV of the parcels, and 180 days thereafter to submit the balance. Payments must be in the form of a certified check, postal money order, bank draft, or cashier's check made payable in U.S. dollars to the order of the U.S. Department of the Interior—BLM. Personal checks will not be accepted. Failure to meet conditions established for this sale will void the sale and any monies received will be forfeited. If the balance of the purchase price is not received within the 180 days, the deposit shall be forfeited to the United States and the parcels withdrawn from sale.

Any patent issued will contain the following numbered reservations, covenants, terms and conditions:

(1) A reservation to the United States for ditches and canals constructed by the authority of the United States, Act of August 30, 1890 (43 U.S.C. 945).

(2) The parcels will be subject to all valid existing rights of record at the time of conveyance.

(3) If appropriate, a reservation of minerals and mineral interests to the United States.

(4) A notice and indemnification statement under the Comprehensive Environmental Response, Compensation and Liability Act (42 U.S.C. 9620(h)), as amended by the Superfund Amendments and Reauthorization Act of 1988, (100 Stat. 1670), holding the United States harmless from any release of hazardous materials that may have occurred as a result of any authorized or unauthorized use of the property by other parties.

(5) Additional terms and conditions that the authorized officer deems appropriate to ensure proper land use and protection of the public interest.

Conveyance of any mineral interest pursuant to section 209 of the FLPMA will be analyzed during processing of the proposed sale.

No warranty of any kind, expressed or implied, is given by the United States as to the title, physical condition, or potential uses of the parcels of land proposed for sale, and the conveyance will not be on a contingency basis. In order to determine the value, through appraisal, certain extraordinary assumptions may be made of the attributes and limitations of the lands and potential effects of local regulations and policies on potential future land uses. Through publication of this Notice of Realty Action, the BLM gives notice that these assumptions may not be endorsed or approved by units of local government. It is the buyer's responsibility to be aware of: (1) All applicable Federal, State, or local

government laws, regulations, or policies that may affect the subject parcels or its future uses, and (2) existing or prospective uses of nearby properties. When conveyed out of Federal ownership, the lands will be subject to any applicable laws, regulations, and policies of the applicable local government for proposed future uses. It will be the responsibility of the purchaser to be aware of those laws, regulations, and policies, and to seek any required local approvals for future uses. Buyers should also make themselves aware of any Federal or State law or regulation that may impact the future use of the property. If the parcels lack access from a public road or highway it will be conveyed as such, and future access acquisition will be the responsibility of the buyer.

Public Comments

For a period until September 10, 2009, interested parties and the general public may submit in writing any comments concerning the parcels being considered for direct sale, including notification of any encumbrances or other claims relating to the parcels, to the BLM Royal Gorge Field Manager at the above address. In order to ensure consideration in the environmental analysis of the proposed sale, comments must be in writing and postmarked or delivered within 45 days of the initial date of publication of this notice. Comments, including names and street addresses of respondents, will be available for public review at the BLM Royal Gorge Field Office during regular business hours. Individual respondents may request confidentiality. Before including your address, phone number, e-mail address, or other personal identifying information in your comment, you should be aware that your entire comment—including your personal identifying information—may be made publicly available at any time. While you can ask us in your comment to withhold your personal identifying information from public review, we cannot guarantee that we will be able to do so. If you wish to have your name or address withheld from public disclosure under the Freedom of Information Act, you must state it prominently at the beginning of your comments. Any determination by the BLM to release or withhold the names and/or addresses of those who comment will be made on a case-by-case basis. Such requests will be honored to the extent allowed by law. BLM will make available for public review, in their entirety, all comments submitted by businesses or organizations, including comments by individuals in their capacity as an official or representative of an organization or business.

Any adverse comments will be reviewed by the BLM State Director, Colorado, who may sustain, vacate, or modify this realty action in whole or in part. In the absence of any adverse comments, this realty action will become the final determination of the Department of the Interior. Information concerning the proposed land sale, including reservations, appraisal, planning and environmental documents, and mineral report, is available for review at the Royal Gorge field Office at the address listed above. Normal business hours are 7:45 a.m. to 4:30 p.m., Monday through Friday, except Federal holidays. The parcels will not be sold until at least September 25, 2009.

Roy L. Masinton,

Field Manager, Royal Gorge Field Office.

[FR Doc. E9–17785 Filed 7–24–09; 8:45 am]

BILLING CODE 4310–JB–P

DEPARTMENT OF THE INTERIOR

Bureau of Land Management

[LLNVB01000.L58740000.EU0000. XFL064F0000; N–79242; 9–08807; TAS: 14X5232]

Notice of Realty Action; Modified Competitive Sealed-Bid Sale of Public Land in Lander County, NV

AGENCY: Bureau of Land Management, Interior.

ACTION: Notice of Realty Action.

SUMMARY: The Bureau of Land Management (BLM) proposes to offer by modified competitive sealed-bid sale, one parcel of public land in Antelope Valley totaling 409.34 acres at not less than the fair market value (FMV) of $60,000. A description of the method of modified competitive bidding to be used and a statement indicating the purpose or objective of the bidding procedure selected is specified in this notice.

DATES: Written comments regarding the proposed sale will be accepted until September 10, 2009. The bidders have until September 25, 2009 to submit sealed bids to the Bureau of Land Management (BLM) Battle Mountain District Office to the address listed below. Sealed bids will be opened no sooner than September 30, 2009 at 3 p.m. Pacific Time.

ADDRESSES: Mail written comments to the BLM Field Manager, Mount Lewis Field Office, 50 Bastian Road, Battle Mountain, NV 89820.

FOR FURTHER INFORMATION CONTACT: Nancy Lockridge, e-mail: *Nancy Lockridge@nv.blm.gov* or phone: (775) 635–4000.

SUPPLEMENTARY INFORMATION: The sale will be subject to the applicable provisions of Sections 203 and 209 of the Federal Land Policy and Management Act of 1976 (FLPMA), 43 U.S.C. 1713 and 1719, respectively, and BLM land sale and mineral conveyance regulations at 43 CFR 2710 and 2720.

The sale parcel is legally described as:

Mount Diablo Meridian

T. 25 N., R. 42 E.,
Sec. 1, lots 7 and 8, and SW¼;
Sec. 12, NW¼.

The area described contains 409.34 acres, more or less, in Lander County.

The sale is in conformance with the 1986 BLM Shoshone-Eureka Resource Management Plan (RMP), approved on February 26, 1986.

The use of the modified competitive sale method is consistent with 43 CFR 2711.3–2(a)(1)(ii). Public lands may be offered for sale by modified competitive bidding procedures when the authorized officer determines it is necessary in order to assure equitable distribution of land among purchasers or to recognize equitable considerations or public policies. Modified competitive bidding includes, but is not limited to, a limitation of persons permitted to bid on a specific parcel of land offered for sale. Factors to be considered in determining when modified competitive bidding procedures shall be used include, but are not limited to, the needs of State and/or local government, adjoining landowners, historical users, and other needs for the parcel.

Lander County supports a request by Nevada Hay Company, which is owned by Dennis Johnson, for a modified competitive sale. Mr. Johnson owns the abutting properties on the east and west boundaries of the parcel. The north and south boundaries are public land. Ellison Ranching Company is the historical user of the land with a grazing permit authorized by the BLM. The sale parcel lacks official public access. In consideration of the adjoining landowner and historical uses of the parcel, the authorized officer has determined Mr. Johnson and Ellison Ranching Company as the bidders for this parcel.

Bidding Procedures: Sealed bids must be accompanied by not less than 20 percent of the bid amount in the form of a certified check, postal money order, bank draft, or cashier's check made payable to the Bureau of Land Management. Personal checks will not be accepted. If the bidders submit a bid

of the same amount, the determination of which is to be considered the highest bid shall be by supplemental bidding. Sealed bid envelopes must be clearly marked on the front lower left corner with ''SEALED BID BLM LAND SALE, [DATE]'', and the identification number of the parcel ''BLM SERIAL NUMBER N–79242''. The bid envelope must also contain the completed BLM form, Certificate of Eligibility, stating the name, mailing address, and phone number of the entity/person making the bid.

Sealed bids will be opened and recorded to determine the high bidder on September 30, 2009 at 3 p.m. Pacific Time at the BLM Battle Mountain District Office. The highest qualifying bidder among the qualified bids received for the sale will be declared.

The bidders or their authorized representative must be present at the bid opening. Should the bidders appoint a representative for this sale, they must submit in writing a notarized document identifying the level of capacity given to their designated representative. This document must be signed by both parties. Acceptance or rejection of any offer to purchase will be in accordance with the procedures set forth in 43 CFR 2711.3–1(f) and (g) of this subpart.

All funds submitted with sealed bids will be returned to the unsuccessful bidder on presentation of photo identification at the designated area.

The successful bidder will be allowed 180 days from the date of the sale to submit the remainder of the full bid price declared in the form of a certified check, postal money order, bank draft, or cashier's check made payable to the Bureau of Land Management. Personal checks will not be accepted. Arrangements for electronic fund transfer to BLM for the payment balance due shall be made a minimum of 2 weeks prior to the payment date. Failure to submit the full bid price prior to the expiration of the 180th day following the sale date will result in the forfeiture of the 20 percent bid deposit to the BLM in accordance with 43 CFR 2711.3–1(d). No exceptions will be made.

Terms and Conditions: No minerals will be reserved to the United States in accordance with BLM approved Mineral Potential Report, dated October 15, 2007. Information pertaining to the reservation of minerals specific to the parcel is located in the case files. Acceptance of the offer to purchase this parcel will constitute an application for conveyance of unreserved mineral interests. These unreserved mineral interests have been determined to have no known mineral value pursuant to 43 CFR 2720.0–6 and 2720.2(a). In conjunction with the final payment, the applicant for these ''no known value'' mineral interests will be required to pay a $50 non-refundable filing fee for processing the conveyance of these mineral interests which will be sold simultaneously with the surface interests.

The conveyances issued would contain the following numbered reservations, covenants, terms, and conditions:

1. A right-of-way is reserved for ditches and canals constructed by authority of the United States under the Act of August 30, 1890 (43 U.S.C. 945);

2. A right-of-way for a power line granted to Nevada Energy, its successors and assigns, by right-of-way No. N–12841, pursuant to the Act of October 21, 1976 (43 U.S.C. 1761);

3. The parcel is subject to valid existing rights;

4. By accepting this patent, the patentee agrees to indemnify, defend and hold the United States harmless from any costs, damages, claims, causes of action, penalties, fines, liabilities, and judgments of any kind or nature arising from the past, present, and future acts or omissions of the patentees, its employees, agents, contractors, or lessees, or any third-party, arising out of, or in connection with, the patentees use, occupancy, or operations on the patented real property. This indemnification and hold harmless agreement includes, but is not limited to, acts and omissions of the patentees, its employees, agents, contractors, or lessees, or third party arising out of or in connection with the use and/or occupancy of the patented real property resulting in: (1) Violations of Federal, State, and local laws and regulations applicable to the real property; (2) Judgments, claims or demands of any kind assessed against the United States; (3) Costs, expenses, damages of any kind incurred by the United States; (4) Other releases or threatened releases on, into or under land, property and other interests of the United States by solid or hazardous waste(s) and/or hazardous substances(s), as defined by Federal or state environmental laws; (5) Other activities by which solid or hazardous substances or wastes, as defined by Federal and State environmental laws were generated, released, stored, used or otherwise disposed of on the patented real property, and any cleanup response, remedial action, or other actions related in any manner to said solid or hazardous substances or wastes; (6) Or natural resource damages as defined by Federal and State law. This covenant shall be construed as running with the patented real property, and may be enforced by the United States in a court of competent jurisdiction; and

5. Pursuant to the requirements established by section 120(h) of the Comprehensive Environmental Response, Compensation and Liability Act, 42 U.S.C. 9620(h) (CERCLA), as amended by the Superfund Amendments and Reauthorization Act of 1988, 100 Stat. 1670, notice is hereby given that the above-described lands have been examined and no evidence was found to indicate that any hazardous substances have been stored for one year or more, nor had any hazardous substances been disposed of or released on the subject property.

The parcel is subject to reservations for roads, public utilities and flood control purposes in accordance with the local governing entities' transportation plans.

No warranty of any kind, express or implied, is given by the United States as to title, whether or to what extent the land may be developed, its physical condition, future uses, or any other circumstance or condition. The conveyance of this parcel will not be on a contingency basis.

The parcel may be subject to land use applications received prior to publication of this notice if processing the application would have no adverse effect on the marketability of title, or the FMV of the parcel. Encumbrances of record, appearing in the case file for the parcel offered for sale, are available for review during business hours, 7:30 a.m. to 4:30 p.m. Pacific Time, Monday through Friday, at the BLM Battle Mountain District Office, except during federally recognized holidays.

Upon publication of this notice and until completion of the sale, the BLM is no longer accepting land use applications affecting the identified land, except applications for the amendment of previously filed right-of-way applications or existing authorizations to increase the term of the grant in accordance with 43 CFR 2807.15 and 2886.15. Land use applications may be considered after completion of the sale for this parcel if the parcel is not sold.

BLM will notify valid existing rights-of-way holders of their ability to convert their compliant rights-of-way to perpetual rights-of-way or easements. Each valid holder will be notified in writing of their rights and then must apply for the conversion of their current authorization.

Federal law requires that bidders must be: (a) A citizen of the United States 18 years of age or over; (b) a corporation subject to the laws of any State or of the United States; (c) a State,

State instrumentality or political subdivision authorized to hold real property; or (d) an entity legally capable of conveying and holding lands or interests therein, under the laws of the State within with the lands to be conveyed are located. Where applicable, the entity shall also meet the requirements of paragraphs (a) and (b) of this section. U.S. citizenship is evidenced by presenting a birth certificate, passport, or naturalization papers. Failure to submit the above requested documents concurrently with the bid shall result in the ineligibility of the bidder.

Unless other satisfactory arrangements are approved in advance by a BLM authorized officer, conveyance of title shall be through the use of escrow. Designation of the escrow agent shall be through mutual agreement between the BLM and the prospective patentee, and costs of escrow shall be borne by the prospective patentee.

Requests for all escrow instructions must be received by the BLM Battle Mountain District Office prior to 30 days before the bidder's scheduled closing date. There are no exceptions.

Within 30 days of the sale, BLM will in writing, either accept or reject all bids received. Pursuant to 43 CFR 2711.3–1, a bid is the bidder's offer to BLM to purchase the parcel. No contractual or other rights against the United States may accrue until BLM officially accepts the offer to purchase, and the full bid price is submitted by the 180th day following the sale. All name changes and supporting documentation must be received at the BLM Battle Mountain District Office concurrently with the bid. To change the name on the bidder statement, high bidders must notify the BLM Battle Mountain District Office in writing, and submit a new bidder statement, which is available at the BLM Battle Mountain District Office or in the sale brochure, and is to be completed by the intended patentee.

BLM will not sign any documents related to 1031 Exchange transactions. The timing for completion of the exchange is the bidder's responsibility in accordance with Internal Revenue Services regulations. BLM is not a party to any 1031 Exchange.

In order to determine the FMV, certain assumptions may have been made of the attributes and limitations of the land and potential effects of local regulations and policies on potential future land uses. Through publication of this notice the BLM advises that these assumptions may not be endorsed or approved by units of local government. It is the buyer's responsibility to be aware of all applicable Federal, State, and local government laws, regulations and policies that may affect the subject lands, including any required dedication of lands for public uses. It is the buyer's responsibility to be aware of existing or projected use of nearby properties. When conveyed out of Federal ownership, the lands will be subject to any applicable laws, regulations, and policies of the applicable local government for proposed future uses. It will be the responsibility of the purchaser to be aware through due diligence of those laws, regulations, and policies, and to seek any required local approvals for future uses. Buyers should also make themselves aware of any Federal or State law or regulation that may impact the future use of the property. Any land lacking access from a public road or highway will be conveyed as such, and future access acquisition will be the responsibility of the buyer.

Information concerning the sale, appraisals, reservations, sale procedures and conditions, CERCLA, maps delineating the sale parcel, the FMV of the parcel, mineral potential report, Environmental Assessment, and other environmental documents will be available for review at the BLM Battle Mountain District Office.

Public Comments: Only written comments submitted by postal service or overnight mail will be considered as properly filed. Electronic mail, facsimile or telephone comments will not be considered as properly filed. Before including your address, phone number, e-mail address, or other personal identifying information in your comment, you should be aware that your entire comment—including your personal identifying information—may be made publicly available at any time. While you may ask us in your comment to withhold your personal identifying information from public review, we cannot guarantee that we will be able to do so.

Any adverse comments regarding the proposed sale will be reviewed by the BLM Nevada State Director, who may sustain, vacate, or modify this realty action. In the absence of any adverse comments, this realty action will become the final determination of the Department of the Interior.

(Authority: 43 CFR 2711)

Douglas W. Furtado,

Field Manager, Mount Lewis Field Office.

[FR Doc. E9–17786 Filed 7–24–09; 8:45 am]

BILLING CODE 4310–HC–P

DEPARTMENT OF JUSTICE

Notice of Lodging of Consent Decree Pursuant to the Comprehensive Environmental Response Compensation and Liability Act (''CERCLA'')

Notice is hereby given that on July 21, 2009, a proposed Consent Decree in *United States* v. *Detrex et al.,* No. 09–5442RBL, was lodged with the United States District Court for the Western District of Washington.

In this action, the United States sought the recovery of response costs pursuant to section 107(a) of the Comprehensive Environmental Response, Compensation, and Recovery Act, 42 U.S.C. 9607(a), incurred at the Hylebos Waterway Problem Areas of OU1 of the Commencement Bay Nearshore/Tideflats Superfund Site in the City of Tacoma, Washington (''Hylebos Waterway Problem Areas''). The defendants, all of whom signed the Consent Decree, are: Detrex Corporation, Goodrich Corporation on behalf of Lubrizol Advanced Materials FCC, Inc. and Noveon Kalama, Inc., Mr. Donald Oline, Portac, Inc. and Weyerhaeuser Company.

Pursuant to the proposed Consent Decree, the Settling Defendants will pay to the United States $2,330,938 in reimbursement of past and future response costs incurred by the United States with respect to the Hylebos Waterway Problem Areas. The proposed Consent Decree provides the Settling Defendants with a covenant not to sue pursuant to Sections 106 and 107 of CERCLA, 42 U.S.C. 9606 and 9607.

The Department of Justice will receive for a period of thirty (30) days from the date of this publication comments relating to the Consent Decree. Comments should be addressed to the Assistant Attorney General, Environment and Natural Resources Division, and either emailed to *pubcomment-ees.enrd@usdoj.gov* or mailed to P.O. Box 7611, U.S. Department of Justice, Washington, DC 20044–7611, and should refer to *United States* v. *Detrex et. al.,* (W.D. Wash.) No. 09–5442RBL, D.J. Ref. 90–11–3–09454/1. The Consent Decree may be examined at the Office of the United States Attorney, Western District of Washington, Office of the United States Attorney for the Western District of Washington, 5200 United States Courthouse, 700 Stewart Street, Seattle, WA 98101–1271. During the public comment period, the Consent Decree may also be examined on the following Department of Justice Web site, *http://www.usdoj.gov/enrd/*

Consent_Decree.html. A copy of the Consent Decree may also be obtained by mail from the Consent Decree Library, P.O. Box 7611, U.S. Department of Justice, Washington, DC 20044–7611 or by faxing or e-mailing a request to Tonia Fleetwood (*tonia.fleetwood@usdoj.gov*), fax no. (202) 514–0097, phone confirmation number (202) 514–1547. In requesting a copy from the Consent Decree Library, please enclose a check in the amount of $9.25 (25 cents per page reproduction cost) payable to the United States Treasury or, if requesting by e-mail or fax, forward a check in that amount to the Consent Decree Library at the stated address.

Maureen Katz,

Assistant Section Chief, Environmental Enforcement Section, Environment and Natural Resources Division.

[FR Doc. E9–17803 Filed 7–24–09; 8:45 am]

BILLING CODE 4410–15–P

DEPARTMENT OF LABOR

Employment and Training Administration Submission for OMB

Emergency Review: Revision of OMB, 1205–0392, Trade Act Participant Report (TAPR), Comment Request

July 17, 2009.

The Department of Labor has submitted the following information collection request (ICR), utilizing emergency review procedures, to the Office of Management and Budget (OMB) for review and clearance in accordance with the Paperwork Reduction Act of 1995 (Pub. L. 104–13, 44 U.S.C. Chapter 35) and 5 CFR 1320.13. OMB approval has been requested by August 7, 2009. A copy of this ICR, with applicable supporting documentation; including among other things a description of the likely respondents, proposed frequency of response, and estimated total burden may be obtained from the RegInfo.gov Web site at *http://www.reginfo.gov/public/do/PRAMain* or by contacting Darrin King on 202–693–4129 (this is not a toll-free number)/e-mail: *DOL_PRA_PUBLIC@dol.gov.* Interested parties are encouraged to send comments to the Office of Information and Regulatory Affairs, Attn: OMB Desk Officer for the Department of Labor—ETA, Office of Management and Budget, Room 10235, Washington, DC 20503, Telephone: 202–395–5806/Fax: 202–395–6974 (these are not toll-free numbers), E-mail: *OIRA_submission@omb.eop.gov.* Comments and questions about the ICR listed below should be received 5 days prior to the requested OMB approval date.

The OMB is particularly interested in comments which:

- Evaluate whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information will have practical utility;
- Evaluate the accuracy of the agency's estimate of the burden of the proposed collection of information, including the validity of the methodology and assumptions used;
- Enhance the quality, utility, and clarity of the information to be collected; and
- Minimize the burden of the collection of information on those who are to respond, including through the use of appropriate automated, electronic, mechanical, or other technological collection techniques or other forms of information technology, e.g., permitting electronic submissions of responses.

Agency: Employment and Training Administration.

Title of Collection: ''Trade Act Participant Report''.

OMB Control Number: 1205–0392.

Frequency of Collection: Quarterly.

Affected Public: State, Local or Tribal Governments.

Estimated Time per Respondent: 47.5 hours per quarterly submission.

Total Estimated Number of Respondents: 50.

Total Estimated Annual Burden Hours: 9,500 hours.

Total Estimated Annual Cost Burden: $0.

Description: On February 17, 2009, the President signed the Trade and Globalization Adjustment Assistance Act of 2009 (TGAAA) which amended the Trade Act of 1974, including the provision of new data collection requirements on TAA participant activities and outcomes. The proposed revision of OMB 1205–0392 ''Trade Act Participant Report'' is designed to provide a single integrated collection format that will meet new reporting requirements listed in amendments to the Trade Act of 1974 (19 U.S.C. 2311 and 2323) through TGAAA, which is part of the American Recovery and Reinvestment Act (ARRA). The new law provided an extensive list of newly mandated data requirements that included specific data elements, display of data according to select criteria, performance measures, and control measures designed to enforce data reliability and validity on TAA program participation and outcome data.

Why are we requesting Emergency Processing? This collection is submitted on an emergency clearance basis, because ARRA (Section 1891) mandates the implementation of these new criteria reporting, listed in 19 U.S.C. 2323 *et seq.,* as amended, by August 17, 2009.

Darrin A. King,

Departmental Clearance Officer.

[FR Doc. E9–17774 Filed 7–24–09; 8:45 am]

BILLING CODE 4510–FN–P

DEPARTMENT OF LABOR

Mine Safety and Health Administration

Proposed Information Collection Request; Submitted for Public Comment and Recommendations; Petitions for Modification of Mandatory Safety Standards

ACTION: Notice.

SUMMARY: The Department of Labor, as part of its continuing effort to reduce paperwork and respondent burden conducts a pre-clearance consultation program to provide the general public and Federal agencies with an opportunity to comment on proposed and/or continuing collections of information in accordance with the Paperwork Reduction Act of 1995 (PRA95) [44 U.S.C. 3506(c)(2)(A)]. This program helps to ensure that requested data can be provided in the desired format, reporting burden (time and financial resources) is minimized, collection instruments are clearly understood, and the impact of collection requirements on respondents can be properly assessed.

Currently, the Mine Safety and Health Administration (MSHA) is soliciting comments concerning the extension of the information collection related to the 30 CFR Sections 44.9, 44.10, and 44.11; Petitions for Modification of Mandatory Safety Standards.

DATES: Submit comments on or before September 25, 2009.

ADDRESSES: Send comments to U.S. Department of Labor, Mine Safety and Health Administration, John Rowlett, Director, Management Services Division, 1100 Wilson Boulevard, Room 2134, Arlington, VA 22209–3939. Commenters are encouraged to send their comments on a computer disk or via E-mail to *Rowlett.John@dol.gov,* along with an original printed copy. Mr. Rowlett can be reached at (202) 693–9827 (voice), or (202) 693–9801 (facsimile).

FOR FURTHER INFORMATION: Contact the employee listed in the **ADDRESSES** section of this notice.

SUPPLEMENTARY INFORMATION:

I. Background

Section 101(c) of the Federal Mine Safety and Health Act of 1977 (Mine Act), 30 U.S.C. 811(c), provides that a mine operator or a representative of miners may petition the Secretary of Labor (Secretary) to modify the application of a mandatory safety standard. 30 CFR Part 44 formally delegates the Secretary's authority to receive petitions to the Director of the Office of Standards, Regulations, and Variances and the authority to issue proposed decisions to the Administrators for Coal and Metal/Nonmetal. A petition for modification may be granted if the Secretary determines (1) that an alternative method of achieving the results of the standard exists and that it will guarantee, at all times, no less than the same measure of protection for the miners affected as that afforded by the standard, or (2) that the application of the standard will result in a diminution of safety to the miners affected.

II. Desired Focus of Comments

MSHA is particularly interested in comments that:

- Evaluate whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information will have practical utility;
- Evaluate the accuracy of the agency's estimate of the burden of the proposed collection of information, including the validity of the methodology and assumptions used;
- Enhance the quality, utility, and clarity of the information to be collected; and
- Minimize the burden of the collection of information on those who are to respond, including through the use of appropriate automated, electronic, mechanical, or other technological collection techniques or other forms of information technology, e.g., permitting electronic submissions of responses.

A copy of the proposed information collection request can be obtained by contacting the employee listed in the **FOR FURTHER INFORMATION CONTACT** section of this notice, or viewed on the internet by accessing the MSHA home page (*http://www.msha.gov/*) and selecting ''Rules & Regs'', and then selecting ''FedReg. Docs''. On the next screen, select ''Paperwork Reduction Act Supporting Statement'' to view documents supporting the **Federal Register** Notice.

III. Current Actions

Under 30 CFR 44.9, mine operators must post a copy of each petition for modification concerning the mine on the mine's bulletin board and maintain the posting until a ruling on the petition becomes final. This applies only to mines for which there is no representative of miners.

Under 30 CFR 44.10, detailed guidance for filing a petition for modification is provided for the operator of the affected mine or any representative of the miners at that mine. The petition must be in writing, filed with the Director of the Office of Standards, Regulations, and Variances, and a copy of the petition served by the filing party (the mine operator or representative of miners) on the other party.

Under 30 CFR 44.11(a), the petition for modification must contain the petitioner's name and address; the mailing address and mine identification number of the mine or mines affected; the mandatory safety standard to which the petition is directed; a concise statement of the modification requested and whether the petitioner (1) Proposes to establish an alternate method in lieu of the mandatory safety standard, or (2) alleges that application of the standard will result in diminution of safety to the miners affected, or (3) requests relief based on both grounds; a detailed statement of the facts that show the grounds upon which a modification is claimed or warranted; and, if the petitioner is a mine operator, the identity of any representative of miners at the affected mine.

Type of Review: Extension.

Agency: Mine Safety and Health Administration.

Title: Petitions for Modification of Mandatory Safety Standards.

OMB Number: 1219–0065.

Recordkeeping: Under 30 CFR 44.9, mine operators must post a copy of each petition for modification concerning the mine on the mine's bulletin board and maintain the posting until a ruling on the petition becomes final. This applies only to mines for which there is no representative of miners.

Under 30 CFR 44.10, the petition must be in writing, filed with the Director of the Office of Standards, Regulations, and Variances, and a copy of the petition served by the filing party (the mine operator or representative of miners) on the other party.

Under 30 CFR 44.11(a), the petition for modification must contain the petitioner's name and address; the mailing address and mine identification number of the mine or mines affected; the mandatory safety standard to which the petition is directed; a concise statement of the modification requested and whether the petitioner (1) Proposes to establish an alternate method in lieu of the mandatory safety standard, or (2) alleges that application of the standard will result in diminution of safety to the miners affected, or (3) requests relief based on both grounds; a detailed statement of the facts that show the grounds upon which a modification is claimed or warranted; and, if the petitioner is a mine operator, the identity of any representative of miners at the affected mine.

Frequency: On occasion.

Affected Public: Business or other for-profit.

Respondents: 80.

Responses: 80.

Total Burden Hours: 2,560.

Total Burden Cost (operating/maintaining): $32,357.

Comments submitted in response to this notice will be summarized and/or included in the request for Office of Management and Budget approval of the information collection request; they will also become a matter of public record.

Dated at Arlington, Virginia, this 21st day of July, 2009.

John Rowlett,

Director, Management Services Division.

[FR Doc. E9–17843 Filed 7–24–09; 8:45 am]

BILLING CODE 4510–43–P

OFFICE OF MANAGEMENT AND BUDGET

Proposed Revision of the Policy on Web Tracking Technologies for Federal Web Sites

AGENCY: Office of Management and Budget, Executive Office of the President.

ACTION: Request for comments.

SUMMARY: The Office of Management and Budget (OMB) is considering options for revising the current prohibition on Web tracking technologies (such as persistent cookies) and invites public comments on the policy that would govern the use of such technologies. The goal of this review is for the Federal Government to continue to protect the privacy of people who visit Federal Government Web sites while at the same time making these Web sites more user-friendly, providing better customer service, and allowing for enhanced Web analytics.

DATES: Comments must be received by August 10, 2009.

ADDRESSES: Submit comments by one of the following methods:

• *Web site: http://www.regulations.gov.*

• *Web site: http://www.whitehouse.gov/open.* Click the link to ''Federal Web sites Cookie Policy Forum'' and follow the instructions for submitting comments electronically.

• *E-mail: oira_submission@omb.eop.gov.*

• *Fax:* (202) 395–7245

Comments submitted in response to this notice will be made available to the public through the relevant Web sites. For this reason, please do not include in your comments information of a confidential nature, such as sensitive personal information or proprietary information. If you send an e-mail comment, your e-mail address will be automatically captured and included as part of the comment that is placed in the public docket and made available on the Internet.

Relevant comments submitted through the White House Open Government Initiative will be taken into consideration alongside those received in response to this notice.

FOR FURTHER INFORMATION CONTACT: Mabel Echols, Office of Information and Regulatory Affairs, Records Management Center, Office of Management and Budget, Room 10102, NEOB, 725 17th Street, NW., Washington, DC 20503. Telephone: (202) 395–6880.

Copies of OMB memoranda M–00–13 and M–03–22 are available on OMB's Web site at *http://www.whitehouse.gov/omb/memoranda_default/.*

SUPPLEMENTARY INFORMATION: On June 22, 2000, OMB issued memorandum M–00–13, which was later updated by memorandum M–03–22, prohibiting the use of Web tracking technologies unless the agency head approves the use of these technologies due to a compelling need.

During the past nine years, Web tracking technologies have become a staple on most commercial Web sites with widespread public acceptance of their use. Technologies such as persistent cookies enable Web sites to remember a visitor's preferences and settings, allowing for a more personalized, user-friendly experience. Moreover, such technologies are necessary for accurate analytics of Web traffic, which helps to inform decisions about how to improve a Web site so that it can better serve the public.

While the benefits of using Web tracking technologies are clear, OMB is acutely aware of, and sensitive to, the privacy questions raised by the use of such technologies. Any evaluation of revisions to the current prohibition must consider, and address, potential risks to privacy.

Under a framework that we are considering, any Federal agency using Web tracking technologies on a Federal Government Web site would be subject to basic principles governing the use of such technologies and would be required to:

• Adhere to all existing laws and policies (including those designed to protect privacy) governing the collection, use, retention, and safeguarding of any data gathered from users;

• Post clear and conspicuous notice on the Web site of the use of Web tracking technologies;

• Provide a clear and understandable means for a user to opt-out of being tracked; and

• Not discriminate against those users who decide to opt-out, in terms of their access to information.

OMB is currently considering the application of a three-tiered approach to the use of Web tracking technologies on Federal Government Web sites. A set of tiers that we are considering would be:

1st Single-session technologies—which track users over a single session and do not maintain tracking data over multiple sessions or visits;

2nd Multi-session technologies for use in Web analytics—which track users over multiple sessions purely to gather data to analyze Web traffic statistics; and

3rd Multi-session technologies for use as persistent identifiers—which track users over multiple visits with the intent of remembering data, settings, or preferences unique to that visitor for purposes beyond what is needed for Web analytics.

It is anticipated that there would be more stringent restrictions or review of the uses of such technologies within the tiers that have higher privacy risks associated with them.

OMB invites public comment on the framework that should govern Federal agency use of Web tracking technologies, including such topics as:

• The appropriate tiers;

• The acceptable use and restrictions of each tier;

• The basic principles governing the use of such technologies;

• The degree of clear and conspicuous notice on each Web site that Web tracking technologies are being used;

• The applicability and scope of such a framework on Federal agency use of third-party applications or Web sites;

• The choice between an opt-in versus opt-out approach for users;

• Unintended or non-obvious privacy implications; and

• Any other general comments with respect to this issue.

Kevin F. Neyland,

Acting Administrator, Office of Information and Regulatory Affairs.

[FR Doc. E9–17756 Filed 7–24–09; 8:45 am]

BILLING CODE 3110–01–P

NUCLEAR REGULATORY COMMISSION

[Docket No. NRC–2009–0133]

Agency Information Collection Activities: Submission for the Office of Management and Budget (OMB) Review; Comment Request

AGENCY: U.S. Nuclear Regulatory Commission (NRC).

ACTION: Notice of the OMB review of information collection and solicitation of public comment.

SUMMARY: The NRC has recently submitted to OMB for review the following proposal for the collection of information under the provisions of the Paperwork Reduction Act of 1995 (44 U.S.C. Chapter 35). The NRC hereby informs potential respondents that an agency may not conduct or sponsor, and that a person is not required to respond to, a collection of information unless it displays a currently valid OMB control number. The NRC published a **Federal Register** Notice with a 60-day comment period on this information collection on March 27, 2009.

1. *Type of submission, new, revision, or extension:* Extension.

2. *The title of the information collection:* 10 CFR Part 40, Domestic Licensing of Source Material.

3. *Current OMB approval number:* 3150–0020.

4. *The form number if applicable:* N/A.

5. *How often the collection is required:* On occasion. Reports required under 10 CFR Part 40 are collected and evaluated on a continuing basis as events occur. There is a one-time submittal of information to receive a license. Renewal applications need to be submitted every 5 to 10 years. Information in previous applications may be referenced without being resubmitted. In addition, recordkeeping must be performed on an on-going basis.

6. *Who will be required or asked to report:* 10 CFR Part 40: Applicants for and holders of NRC licenses authorizing the receipt, possession, use, or transfer

of radioactive source and byproduct material.

7. *An estimate of the number of annual responses:* 894 (273 NRC Licensees [68 NRC responses + 205 NRC Recordkeepers] + 621 Agreement State Licensees [349 Agreement State responses + 272 Agreement State recordkeepers]).

8. *The estimated number of annual respondents:* 340 (68 NRC Licensees + 272 Agreement State Licensees).

9. *An estimate of the total number of hours needed annually to complete the requirement or request:* 65,418 total hours [20,769 for NRC Licensees (16,067 hours for reporting and 4,702 hours for recordkeeping) and 44,649 for Agreement State Licensees (26,923 hours for reporting and 17,726 hours for recordkeeping)].

10. *Abstract:* 10 CFR Part 40 establishes requirements for licenses for the receipt, possession, use and transfer of radioactive source and byproduct material. The application, reporting and recordkeeping requirements are necessary to permit the NRC to make a determination on whether the possession, use, and transfer of source and byproduct material is in conformance with the Commission's regulations for protection of public health and safety.

A copy of the final supporting statement may be viewed free of charge at the NRC Public Document Room, One White Flint North, 11555 Rockville Pike, Room O–1 F21, Rockville, Maryland 20852. OMB clearance requests are available at the NRC worldwide Web site: *http://www.nrc.gov/public-involve/doc-comment/omb/index.html.* The document will be available on the NRC home page site for 60 days after the signature date of this notice.

Comments and questions should be directed to the OMB reviewer listed below by August 26, 2009. Comments received after this date will be considered if it is practical to do so, but assurance of consideration cannot be given to comments received after this date.

NRC Desk Officer, Office of Information and Regulatory Affairs (3150–0020), NEOB–10202, Office of Management and Budget, Washington, DC 20503.

The Acting NRC Clearance Officer is Tremaine Donnell, (301) 415–6258.

Dated at Rockville, Maryland, this 20th day of July 2009.

For the Nuclear Regulatory Commission.

Tremaine Donnell,

Acting NRC Clearance Officer, Office of Information Services.

[FR Doc. E9–17789 Filed 7–24–09; 8:45 am]

BILLING CODE 7590–01–P

NUCLEAR REGULATORY COMMISSION

[NRC–2009–0316; Docket Nos. STN 50–528, STN 50–529, and STN 50–530]

Arizona Public Service Company, et al.; Palo Verde Nuclear Generating Station, Units 1, 2, and 3; Exemption

1.0 Background

The Arizona Public Service Company (APS, the facility licensee) is the holder of Facility Operating License Nos. NPF–41, NPF–51, and NPF–74, which authorize operation of the Palo Verde Nuclear Generating Station (PVNGS, the facility), Units 1, 2, and 3, respectively. The licenses provide, among other things, that the PVNGS is subject to all rules, regulations, and orders of the Nuclear Regulatory Commission (NRC, or the Commission) now or hereafter in effect.

The facility consists of three pressurized-water reactors located 55 miles west of Phoenix, in Maricopa County, Arizona.

2.0 Request/Action

Title 10 of the *Code of Federal Regulations* (10 CFR), Part 55, ''Operators' Licenses,'' specifies the requirements and procedures governing the issuance of licenses to operators and senior operators of utilization facilities licensed under the Atomic Energy Act of 1954, as amended, or Section 202 of the Energy Reorganization Act of 1974, as amended, and 10 CFR part 50, part 52, or part 54 of the Commission's regulations. Section 55.11, ''Specific exemptions,'' of 10 CFR states that the Commission may, upon application by an interested person, or upon its own initiative, grant such exemptions from the requirements of the regulations in this part as it determines are authorized by law and will not endanger life or property and are otherwise in the public interest.

The specific requirements for written examinations and operating tests for senior operator candidates are described in 10 CFR 55.43, ''Written examination: Senior operators,'' and 10 CFR 55.45, ''Operating tests,'' respectively. 10 CFR 55.47, ''Waiver of examination and test requirements,'' provides the criteria under which the Commission may waive any or all of the test requirements, upon application by a facility licensee.

By letter dated February 6, 2009, APS requested a one-time exemption, in accordance with 10 CFR 55.11, ''Specific exemptions,'' from the reactor operator licensing examination waiver requirements of 10 CFR 55.47(a)(1). Specifically, the facility licensee requested that Mr. Mark A. Sharp be exempted from the requirement to have extensive actual operating experience at PVNGS (or a comparable facility) within 2 years before the date of application (*i.e.,* December 10, 2008), so that he would not have to take and pass an NRC-administered written examination and operating test as a requirement for re-licensing as a senior reactor operator at PVNGS.

Mr. Sharp (Docket No. 55–31662) was the holder of Senior Reactor Operator License No. SOP–43795 from December 6, 1996, until December 11, 2006. The license authorized Mr. Sharp to manipulate the controls of the PVNGS facility and to direct the licensed activities of licensed operators at the facility. Mr. Sharp's license was terminated at the request of facility management when he resigned his employment with APS.

By letter dated December 10, 2008, and in accordance with 10 CFR 55.31, APS submitted a new license application (NRC Form 398, ''Personal Qualification Statement—Licensee'') on behalf of Mr. Sharp. In that letter, APS requested, pursuant to 10 CFR 55.47(a), that the NRC waive the requirement for Mr. Sharp to take and pass an NRC-administered licensing examination (including both the written examination and operating test) normally required by 10 CFR 55.33(a)(2) to approve an operator license application. In support of the request, APS stated that Mr. Sharp had previously been licensed at PVNGS for approximately 10 years, had extensive actual operating experience at the facility, had re-enrolled in the licensed operator requalification training program and made up the training that he had missed during his absence, and had passed the recently administered written requalification examination and operating test. As holder of the PVNGS facility operating license by which Mr. Sharp was previously employed and where his services would again be utilized, APS also provided the certifications of past performance and current qualifications required by 10 CFR 55.47(b) and (c).

By letter dated January 29, 2009, the NRC notified Mr. Sharp that his request for a waiver of the written examination and operating test had been denied because he did not satisfy the

experience requirements stated in 10 CFR 55.47(a)(1). Although there was no question that Mr. Sharp had extensive operating experience at PVNGS, he had no actual operating experience at PVNGS (or any comparable facility) within the 2-year period immediately prior to the date of his application. The NRC letter informed Mr. Sharp that PVNGS could request an exemption from the requirements of 10 CFR 55.47(a)(1) in accordance with 10 CFR 55.11. The NRC letter did not specifically address the requirements of 10 CFR 55.47(a)(2) and (3); however, the NRC staff found no reason to reject APS's certification that Mr. Sharp would continue to competently and safely discharge his responsibilities and that he had learned the procedures for and was qualified to operate the PVNGS facility.

Following receipt of the NRC letter of January 29, 2009, APS submitted the February 6, 2009, exemption request, which further explained the facility licensee's need for the requested action. NRC Inspection Report 2008–002, dated May 9, 2008, had identified a violation involving the excessive use of operator overtime that resulted from a failure of APS to maintain a sufficient number of licensed operators at PVNGS. In order to increase its staff of licensed reactor operators as part of its corrective action for that violation, APS has been seeking to re-license individuals who had been previously licensed at PVNGS, and has increased the number of students in its licensed reactor operator training classes.

3.0 Discussion

Pursuant to 10 CFR 55.11, the Commission may, upon application by an interested person, or upon its own initiative, grant such exemptions from the requirements of the regulations in this part as it determines are authorized by law and will not endanger life or property and are otherwise in the public interest. The requested action would exempt Mr. Sharp from meeting the waiver requirement in 10 CFR 55.47(a)(1) for an applicant to have had extensive actual operating experience within 2 years of the date of an operator license application. Mr. Sharp's last actual operating experience at PVNGS (or a comparable facility) occurred on November 7, 2006, which was more than 2 years before the date on which APS submitted his current license application (December 10, 2008); therefore, the exemption would effectively extend the waiver criterion specified in 10 CFR 55.47(a)(1), by approximately 1 month.

As described in the December 10, 2008, license application and in APS's February 6, 2009, exemption request, Mr. Sharp was away from the PVNGS and the licensed operator requalification training program for a period of 19 months, from November 2006 to June 2008. Since returning to PVNGS, Mr. Sharp has completed the following training and experience activities:

- Through a process involving self-study and one-on-one instruction, Mr. Sharp made up all of the licensed operator requalification training that he had missed during his absence. Since completing that training, Mr. Sharp has rejoined and remains current in the PVNGS licensed operator requalification training program.
- Mr. Sharp spent a total of 104 hours on shift as an operator under instruction, including 20 hours as a non-licensed operator performing plant walk-downs and tours, 36 hours as a Reactor Operator, and 48 hours as a Control Room Supervisor.
- In September and October 2008, Mr. Sharp took and passed the regularly scheduled licensed operator written requalification examination, simulator operating test, and walk-through (job performance measure) operating test.
- Since returning to the site in June 2008, Mr. Sharp has been working as a Senior Reactor Operator certified classroom and simulator instructor at the PVNGS. This position requires detailed knowledge of the facility and its operating procedures at a level comparable to that required of a licensed senior reactor operator, and involves routine interaction with the facility's operating staff.

The NRC staff accepts the facility licensee's certification that Mr. Sharp discharged his responsibilities competently and safely in the past and is capable of continuing to do so. Similarly, the NRC staff accepts the facility licensee's certification that Mr. Sharp has learned the operating procedures for and is qualified to competently and safely operate the PVNGS facility. Therefore, based on these certifications and the additional information provided by APS in support of Mr. Sharp's experience and qualifications, the NRC staff has concluded, pursuant to 10 CFR 55.11, that granting this exemption from the waiver criterion of 10 CFR 55.47(a)(1), will have a negligible effect on plant safety and will not endanger life or property.

The NRC staff has also concluded, pursuant to 10 CFR 55.11, that granting this exemption to the waiver criterion of 10 CFR 55.47(a)(1), is authorized by law and is otherwise in the public interest. Section 55.11 of 10 CFR allows the NRC to grant exemptions to the regulations in 10 CFR part 55, and the NRC has determined that the granting of the proposed exemption will not result in a violation of the Atomic Energy Act of 1954, as amended, or the Commission's regulations. Therefore, the exemption is authorized by law. As noted in the exemption request, Mr. Sharp only exceeded the waiver criterion of 10 CFR 55.47(a)(1), for extensive actual operating experience within the previous 2 years, by 33 days; thus, the granting of the exemption in this instance would effectively extend that criterion by only a brief time. APS has had a shortage of licensed operators for PVNGS that resulted in an excessive use of operator overtime, which in turn led to the issuance of an NRC notice of violation and the establishment of an on-going activity in the corrective action program. Worker fatigue, at PVNGS and in the nuclear industry, in general, is of serious concern to the NRC and prompted the Commission to amend 10 CFR part 26 in March 2008 to include new requirements for facility licensees to establish written policies for the management of fatigue for all individuals who are subject to the licensee's fitness-for-duty program, including licensed reactor operators. The new regulations, which are scheduled to go into effect in the fall of 2009, are expected to increase the number of licensed operators that facility licensees will need in order to maintain minimum shift staffing requirements without exceeding work-hour limits.

The next NRC licensing examination at PVNGS is currently scheduled for November 2009. Delaying Mr. Sharp's opportunity to be re-licensed until that time would not serve the best interests of APS or the surrounding public, and the cost of preparing, approving, and administering a special licensing examination for Mr. Sharp would be substantial for both APS and the NRC, without a commensurate benefit to either party or the public. Therefore, the NRC has determined that the granting of this exemption is in the public interest.

4.0 Conclusion

Accordingly, the Commission has determined that, pursuant to 10 CFR 55.11, granting an exemption from the requirements of 10 CFR 55.47(a)(1) to allow Mr. Sharp to be eligible for a waiver from the NRC licensing examination requirements, is authorized by law and will not endanger life or property and is otherwise in the public interest.

Therefore, the Commission hereby grants APS an exemption from the requirements of 10 CFR 55.47(a)(1) for Mr. Mark A. Sharp, an applicant for a senior reactor operator license at the PVNGS.

Pursuant to 10 CFR 51.32, the Commission has determined that the granting of this exemption will not have a significant effect on the quality of the human environment (74 FR 34803; dated July 17, 2009).

This exemption is effective upon issuance.

Dated at Rockville, Maryland, this 20th day of July 2009.

For The Nuclear Regulatory Commission.

Joseph G. Giitter,

Director, Division of Operating Reactor Licensing, Office of Nuclear Reactor Regulation.

[FR Doc. E9–17790 Filed 7–24–09; 8:45 am]

BILLING CODE 7590–01–P

PENSION BENEFIT GUARANTY CORPORATION

Submission of Information Collection for OMB Review; Comment Request; Qualified Domestic Relations Orders Submitted to PBGC

AGENCY: Pension Benefit Guaranty Corporation.

ACTION: Notice of request for extension of OMB approval.

SUMMARY: Pension Benefit Guaranty Corporation (''PBGC'') is requesting that the Office of Management and Budget (''OMB'') extend approval, under the Paperwork Reduction Act, of the collection of information in PBGC's booklet *Qualified Domestic Relations Orders & PBGC* (OMB control number 1212–0054; expires August 31, 2009). This notice informs the public of PBGC's request and solicits public comment on the collection of information.

DATES: Comments should be submitted by August 26, 2009.

ADDRESSES: Comments should be sent to the Office of Information and Regulatory Affairs, Office of Management and Budget, Attention: Desk Officer for Pension Benefit Guaranty Corporation, via electronic mail at *OIRA_DOCKET@omb.eop.gov* or by fax to 202–395–6974.

A copy of PBGC's request may be obtained without charge by writing to the Disclosure Division of the Office of the General Counsel of PBGC at the above address or by visiting that office or calling 202 326 4040 during normal business hours. (TTY and TDD users may call the Federal relay service toll free at 1 800 877 8339 and ask to be connected to 202 326 4040.) The request is also available at *http://www.reginfo.gov.* The current QDRO booklet is available on PBGC's Web site at *http://www.pbgc.gov.*

FOR FURTHER INFORMATION CONTACT: Jo Amato Burns, Attorney, Legislative and Regulatory Department, Pension Benefit Guaranty Corporation, 1200 K Street, NW., Washington, DC 20005–4026, 202–326–4024. (TTY and TDD users may call the Federal relay service toll-free at 1–800–877–8339 and ask to be connected to 202–326–4024.)

SUPPLEMENTARY INFORMATION: PBGC is requesting that OMB extend its approval of the guidance and model language and forms contained in the PBGC booklet, *Qualified Domestic Relations Orders & PBGC.*

A defined benefit pension plan that does not have enough money to pay benefits may be terminated if the employer responsible for the plan faces severe financial difficulty, such as bankruptcy, and is unable to maintain the plan. In such an event, PBGC becomes trustee of the plan and pays benefits, subject to legal limits, to plan participants and beneficiaries.

The benefits of a pension plan participant generally may not be assigned or alienated. However, Title I of ERISA provides an exception for domestic relations orders that relate to child support, alimony payments, or the marital property rights of an alternate payee (a spouse, former spouse, child, or other dependent of a plan participant). The exception applies only if the domestic relations order meets specific legal requirements that make it a qualified domestic relations order, or ''QDRO.''

ERISA provides that pension plans are required to comply with only those domestic relations orders which are QDROs, and that the decision as to whether a domestic relations order is a QDRO is made by the plan administrator. When PBGC is trustee of a plan, it reviews submitted domestic relations orders to determine whether the order is qualified before paying benefits to an alternate payee. The requirements for submitting a QDRO are established by statute.

To simplify the process, PBGC has included model QDROs and accompanying guidance in a booklet, *Qualified Domestic Relations Orders & PBGC.*—The models and guidance assist parties by making it easier to comply with ERISA's QDRO requirements when drafting orders for plans trusteed by PBGC. The booklet does not create any additional requirements.

PBGC is not making any substantive revisions to the current QDRO booklet. One definition has been conformed to a change under the Pension Protection Act of 2006 and several references have been updated.

The collection of information has been approved through August 31, 2009, by OMB under control number 1212–0054. PBGC is requesting that OMB extend approval of the collection of information for three years. An agency may not conduct or sponsor, and a person is not required to respond to, a collection of information unless it displays a currently valid OMB control number.

PBGC estimates that it will receive 895 domestic relations orders annually and that the average annual burden of this collection of information is 2105 hours and $495,060.

Issued in Washington, DC, this 21 day of July, 2009.

John H. Hanley,

Director, Legislative and Regulatory Department, Pension Benefit Guaranty Corporation.

[FR Doc. E9–17873 Filed 7–24–09; 8:45 am]

BILLING CODE 7709–01–P

POSTAL REGULATORY COMMISSION

[Docket Nos. MC2009–27 and CP2009–37; Order No. 231]

Priority Mail Contract

AGENCY: Postal Regulatory Commission.

ACTION: Notice.

SUMMARY: Commission Order No. 231, which addresses a new Priority Mail contract, was inadvertently submitted to the **Federal Register** for publication in the Notices category. It appeared in that category on July 16, 2009 (74 FR 34598). Order No. 231 should have been submitted for publication in the ''Rules'' category, as this would have effectuated an intended change in the Code of Federal Regulations. The Commission is withdrawing the referenced Notice document and is submitting Order No. 231 for publication in the appropriate category.

FOR FURTHER INFORMATION CONTACT: Stephen L. Sharfman, general counsel, 202–789–6820 or *stephen.sharfman@prc.gov.*

Judith M. Grady,

Acting Secretary.

[FR Doc. E9–17811 Filed 7–24–09; 8:45 am]

BILLING CODE 7710–FW–P

SECURITIES AND EXCHANGE COMMISSION

Proposed Extension of Existing Collection; Comment Request

Upon written request, copies available from: U.S. Securities and Exchange Commission, Office of Investor Education and Advocacy, Washington, DC 20549–0213.

Extension: Rule 17Ad–4(b) and (c); OMB Control No. 3235–0341;SEC File No. 270–264.

Notice is hereby given that pursuant to the Paperwork Reduction Act of 1995 (44 U.S.C. 3501 *et seq.*) the Securities and Exchange Commission (''Commission'') is soliciting comments on the existing collection of information provided for in the following rule: Rule 17Ad–4(b) and (c) under the Securities Exchange Act of 1934 (15 U.S.C. 78a *et seq.*) (''Exchange Act''). The Commission plans to submit this existing collection of information to the Office of Management and Budget (''OMB'') for extension and approval.

Rule 17Ad–4(b) and (c) (17 CFR 240.17Ad–4) is used to document when transfer agents are exempt, or no longer exempt, from the minimum performance standards and certain recordkeeping provisions of the Commission's transfer agent rules. Rule 17Ad–4(c) sets forth the conditions under which a registered transfer agent loses its exempt status. Once the conditions for exemption no longer exist, the transfer agent, to keep the appropriate regulatory authority (''ARA'') apprised of its current status, must prepare, and file if the ARA for the transfer agent is the Board of Governors of the Federal Reserve System (''BGFRS'') or the Federal Deposit Insurance Corporation (''FDIC''), a notice of loss of exempt status under paragraph (c). The transfer agent then cannot claim exempt status under Rule 17Ad–4(b) again until it remains subject to the minimum performance standards for non-exempt transfer agents for six consecutive months. The ARAs use the information contained in the notice to determine whether a registered transfer agent qualifies for the exemption, to determine when a registered transfer agent no longer qualifies for the exemption, and to determine the extent to which that transfer agent is subject to regulation.

The BGFRS receives approximately two notices of exempt status and two notices of loss of exempt status annually. The FDIC also receives approximately two notices of exempt status and two notices of loss of exempt status annually. The Commission and the Office of the Comptroller of the Currency (''OCC'') do not require transfer agents to file a notice of exempt status or loss of exempt status. Instead, transfer agents whose ARA is the Commission or OCC need only to prepare and maintain these notices. The Commission estimates that approximately ten notices of exempt status and ten notices of loss of exempt status are prepared annually by transfer agents whose ARA is the Commission. We estimate that the transfer agents for whom the OCC is their ARA prepare and maintain approximately five notices of exempt status and five notices of loss of exempt status annually. Thus, a total of approximately thirty-eight notices of exempt status and loss of exempt status are prepared and maintained by transfer agents annually. Of these thirty-eight notices, approximately eight are filed with an ARA. Any additional costs associated with filing such notices would be limited primarily to postage, which would be minimal. Since the Commission estimates that no more than one-half hour is required to prepare each notice, the total annual burden to transfer agents is approximately nineteen hours. The average cost per hour is approximately $30. Therefore, the total cost of compliance to the transfer agent industry is about $570.

Written comments are invited on: (a) Whether the proposed collection of information is necessary for the proper performance of the functions of the Commission, including whether the information shall have practical utility; (b) the accuracy of the Commission's estimates of the burden of the proposed collection of information; (c) ways to enhance the quality, utility, and clarity of the information to be collected; and (d) ways to minimize the burden of the collection of information on respondents, including through the use of automated collection techniques or other forms of information technology. Consideration will be given to comments and suggestions submitted in writing within 60 days of this publication.

Comments should be directed to Charles Boucher, Director/Chief Information Officer, Securities and Exchange Commission, c/o Shirley Martinson, 6432 General Green Way, Alexandria, VA 22312 or send an e-mail to: *PRA_Mailbox@sec.gov.*

Dated: July 21, 2009.

Florence E. Harmon,

Deputy Secretary.

[FR Doc. E9–17768 Filed 7–24–09; 8:45 am]

BILLING CODE 8010–01–P

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–60352; File No. SR–NASDAQ–2009–059]

Self-Regulatory Organizations; the NASDAQ Stock Market LLC; Notice of Filing and Immediate Effectiveness of a Proposed Rule Change Modifying Fees for Members Using the NASDAQ Options Market

July 21, 2009.

Pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 (''Act'') [1], and Rule 19b–4 thereunder,[2] notice is hereby given that on July 1, 2009, The NASDAQ Stock Market LLC (''NASDAQ'') filed with the Securities and Exchange Commission (''Commission'') the proposed rule change as described in Items I, II, and III, below, which Items have been prepared by NASDAQ. Pursuant to Section 19(b)(3)(A)(ii) of the Act [3] and Rule 19b–4(f)(2) thereunder,[4] a proposed rule change to modify pricing for NASDAQ members using the NASDAQ Options Market (''NOM''), Nasdaq's facility for the trading of standardized equity and index options [sic]. The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

NASDAQ proposes to modify pricing for NASDAQ members using the Nasdaq Market Center. This proposed rule change, which is effective upon filing, will become operative on July 1, 2009. The text of the proposed rule change is available at *http://nasdaqomx.cchwallstreet.com/*, at NASDAQ's principal office, and at the Commission's Public Reference Room.

II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, NASDAQ included statements concerning the purpose of and basis for the proposed rule change. The text of these statements may be examined at the places specified in Item IV below. NASDAQ has prepared summaries, set forth in Sections A, B, and C below, of the most significant aspects of such statements.

[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b–4.

[3] 15 U.S.C. 78s(b)(3)(A)(ii).

[4] 17 CFR 240.19b–4(f)(2).

A. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

1. Purpose

Nasdaq is modifying NASDQ Rule 7050, the fee schedule for NOM, in several ways. First, Nasdaq is making changes that apply to orders with an account type of ''Customer.'' Specifically, Nasdaq is ending its pricing program to eliminate the fee for the execution of options orders with an account type of ''Customer'' that take liquidity [5] in certain Penny Pilot options. In April, Nasdaq expanded the application of that rule to all options that are included in the Options Penny Pilot Program. Nasdaq continued to monitor the trading of options on these equities to ensure that the proposal is operating in a fashion that promotes the interests of investors. Nasdaq has concluded that the reduction of fees is no longer attracting new order flow to NOM and, therefore, Nasdaq is establishing a fee of $0.20 per executed contract for Customer orders in Penny Pilot options.

Second, Nasdaq is also changing the fee structure for ''Customer'' orders in options not included in the Options Penny Pilot Program. Currently, Nasdaq charges no execution fees for members providing liquidity through the NASDAQ Options Market with an account type ''Customer.'' Nasdaq also offers a credit of $0.20 per executed contract to members entering orders in options with an account type ''Customer'' that execute and remove liquidity entered by another member in options that are not included in the Options Penny Pilot Program. Nasdaq is proposing to eliminate the payment of this credit when an order with an account type of Customer executes against another order with an account type of Customer. Nasdaq determined that the previous rule resulted in disproportionate payment for Customer orders relative to order volume growth.

Third, Nasdaq is modifying NASDAQ Rule 7050 to lower from $0.45 to $0.20 the fees applicable to orders from Firms that remove liquidity in non-Penny Pilot stocks. Nasdaq believes that lowering this fee will attract more order flow to NOM and improve its overall competitiveness.

Nasdaq believes that the proposed fees are competitive, fair and reasonable, and non-discriminatory in that they apply equally to all similarly situated members and customers. As with all fees, Nasdaq may adjust these proposed fees in response to competitive conditions by filing a new proposed rule change.

2. Statutory Basis

Nasdaq believes that the proposed rule change is consistent with the provisions of Section 6 of the Act,[6] in general, and with Section 6(b)(5) of the Act,[7] in particular, in that the proposal is designed to prevent fraudulent and manipulative acts and practices, to promote just and equitable principles of trade, to foster cooperation and coordination with persons engaged in regulating, clearing, settling, processing information with respect to, and facilitating transactions in securities, to remove impediments to and perfect the mechanism of a free and open market and a national market system, and, in general, to protect investors and the public interest.

NASDAQ also believes that the proposed rule change is consistent with Section 6(b)(4) of the Act,[8] in particular, in that it provides for the equitable allocation of reasonable dues, fees and other charges among members and issuers and other persons using any facility or system which NASDAQ operates or controls. The proposed change identifies a class of person subject to transaction execution fees based on the role of that class in bringing order flow to NASDAQ. With respect to options markets, the Commission has found comparable pricing distinctions to be consistent with the Act. For example, in SR–ISE–2006–26,[9] the Commission approved a fee schedule under which orders of professional customers were charged higher fees than orders of non-professional customers. A Firm rate that is lower than other participant rates is not uncommon. In fact, ISE charges the same differential rate that NASDAQ is proposing: $0.20 per contract for Proprietary Firm executions and $0.45 per contract for non-ISE–Market Makers.[10]

NASDAQ also believes it is equitable to rebate customer executions in non-penny pilot options when the customer removes liquidity, unless the customer removes liquidity from a resting customer order. In that case, neither side of the trade is charged a fee or given a rebate. In other words, customer-to-customer transactions will be free to both sides of the trade (as is the case on most options markets) and therefore in NASDAQ's view it is not justifiable to pay an additional rebate. NASDAQ understands that on exchanges that engage in payment-for-order-flow and that have less transparent fee schedules, customer orders that interact with other customer orders do not receive payment whereas customer orders that interact with a market maker do receive payment for order flow.

The impact of the changes upon the net fees paid by a particular market participant will depend upon a number of variables, including its monthly volume, the order types it uses, and the prices of its quotes and orders (*i.e.*, its propensity to add or remove liquidity and to set the best bid and offer), and the extent to which it acts as an agent for retail customers. NASDAQ notes that it operates in a highly competitive market in which market participants can readily direct order flow to competing venues if they deem fee levels at a particular venue to be excessive. NASDAQ is modifying fees to remain competitive with those charged by other venues and therefore strongly believes that its fees are reasonable and equitably allocated to those members that opt to direct orders to NASDAQ rather than competing venues.

B. Self-Regulatory Organization's Statement on Burden on Competition

NASDAQ does not believe that the proposed rule change will result in any burden on competition that is not necessary or appropriate in furtherance of the purposes of the Act, as amended.

C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received From Members, Participants or Others

Written comments were neither solicited nor received.

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

The foregoing rule change has become effective pursuant to Section 19(b)(3)(A)(ii) of the Act [11] and subparagraph (f)(2) of Rule 19b–4 thereunder.[12] At any time within 60 days of the filing of the proposed rule change, the Commission may summarily abrogate such rule change if it appears to the Commission that such action is necessary or appropriate in the public

[5] An order that ''takes'' or ''removes'' liquidity is one that is entered into NOM and that executes against an order resting on the NOM book.

[6] 15 U.S.C. 78f.

[7] 15 U.S.C. 78f(b)(5).

[8] 15 U.S.C. 78f(b)(4).

[9] Securities Exchange Act Release No. 59287 (January 23, 2009), 74 FR 5694 (January 30, 2009) (SR–ISE–2006–26).

[10] *See http://www.ise.com/assets//documents//optionsExchange//legal/fee/fee_schedule.*

[11] 15 U.S.C. 78s(b)(3)(a)(ii).

[12] 17 CFR 240.19b–4(f)(2).

interest, for the protection of investors, or otherwise in furtherance of the purposes of the Act.

IV. Solicitation of Comments

Interested persons are invited to submit written data, views, and arguments concerning the foregoing, including whether the proposed rule change is consistent with the Act. In addition, the Commission seeks comment generally on whether the proposed assessment of transaction fees is consistent with the Act, in particular whether the proposal provides for an equitable allocation of reasonable dues, fees, and other charges among its members and issuers and other persons using its facilities under Section 6(b)(4) of the Act or whether the proposal permits unfair discrimination between customers, issuers, brokers, or dealers under Section 6(b)(5) of the Act. Specifically:

1. The Exchange has determined that the previous $0.20 rebate for a Customer account for removing liquidity resulted in disproportionate payment for Customer orders relative to order volume growth. Do commenters believe that eliminating the rebate to Customers removing liquidity in non-Penny Pilot options when that Customer trades against a Customer order, while retaining the rebate to Customers that trade against a Firm or Market Maker order is consistent with the Act, including whether it is an equitable allocation of fees under Section 6(b)(4) and not unfairly discriminatory under Section 6(b)(5)? Why or why not?

2. The Commission notes that the fee schedules of some options exchanges provide for different levels of transaction fees for different categories of market participants. Generally, if there is a distinction between transaction fees for market makers and other non-customers (*e.g.* broker-dealers, firms), the market maker transaction fee is less than the non-customer fee. However, the Exchange notes that one exchange charges away market makers more than non-customer orders.[13] The Exchange proposes to charge Market Makers $0.45 per contract to remove orders in non-Penny Pilot options and to charge Firms $0.20 per contract to remove such orders. Is this fee differential consistent with the Act, including whether it is an equitable allocation of fees under Section 6(b)(4) and not unfairly discriminatory under Section 6(b)(5)? Why or why not?

3. In non-Penny Pilot options, the Exchange proposes to lower the fees charged to firms that remove liquidity from $0.45 to $0.20. The Exchange, however, maintains the fee of $0.45 for sending orders via the Options Intermarket Linkage that execute on NOM. Is creating a differential in this manner consistent with the Act, including whether it is an equitable allocation of fees under Section 6(b)(4) and not unfairly discriminatory under Section 6(b)(5)? Why or why not?

Comments may be submitted by any of the following methods:

Electronic Comments

- Use the Commission's Internet comment form (*http://www.sec.gov/rules/sro.shtml*); or
- Send an e-mail to rule-comments@sec.gov. Please include File Number SR–NASDAQ–2009–059 on the subject line.

Paper Comments

- Send paper comments in triplicate to Elizabeth M. Murphy, Secretary, Securities and Exchange Commission, 100 F Street, NE., Washington DC 20549–1090.

All submissions should refer to File Number SR–NASDAQ–2009–059. This file number should be included on the subject line if e-mail is used. To help the Commission process and review your comments more efficiently, please use only one method. The Commission will post all comments on the Commission's Internet Web site (*http://www.sec.gov/rules/sro.shtml*). Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for inspection and copying in the Commission's Public Reference Room, 100 F Street, NE., Washington, DC 20549, on official business days between the hours of 10 a.m. and 3 p.m. Copies of such filing also will be available for inspection and copying at the principal office of the Exchange. All comments received will be posted without change; the Commission does not edit personal identifying information from submissions. You should submit only information that you wish to make available publicly. All submissions should refer to File No. SR–NASDAQ–2009–059 and should be submitted on or before August 17, 2009.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.[14]

Florence E. Harmon,

Deputy Secretary.

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[13] *See supra* note 10 and accompanying text.

[14] 17 CFR 200.30–3(a)(12).

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–60320; File No. SR–CTA–2009–01]

Consolidated Tape Association; Notice of Filing and Immediate Effectiveness of the Twelfth Charges Amendment to the Second Restatement of the Consolidated Tape Association Plan

July 16, 2009.

Pursuant to Section 11A of the Securities Exchange Act of 1934 (''Act''),[1] and Rule 608 thereunder,[2] notice is hereby given that on July 13, 2009, the Consolidated Tape Association (''CTA'') Plan Participants (''Participants'') [3] filed with the Securities and Exchange Commission (''Commission'') a proposal to amend the Second Restatement of the CTA Plan (the ''CTA Plan''). The proposal represents the twelfth charges amendment to the Plan (''Twelfth Charges Amendment'') and reflects changes unanimously adopted by the Participants. The Twelfth Charges Amendment would delete the ticker display charge from Schedule A–1 of Exhibit E of the CTA Plan.

Pursuant to Rule 608(b)(3)(ii) under the Act,[4] the Participants designated the Amendment as concerned solely with the administration of the Plan. As a result, the Amendment has become effective upon filing with the Commission. At any time within 60 days of the filing of the Amendment, the Commission may summarily abrogate the Amendment and require that the Amendment be refiled in accordance with paragraph (a)(1) of Rule 608 and reviewed in accordance with paragraph (b)(2) of Rule 608, if it appears to the

[1] 15 U.S.C. 78k–1.

[2] 17 CFR 242.608.

[3] Each Participant executed the proposed amendment. The Participants are the American Stock Exchange LLC (n/k/a NYSE Amex LLC); Boston Stock Exchange, Inc. (n/k/a NASDAQ OMX BX, Inc.); Chicago Board Options Exchange, Incorporated; Chicago Stock Exchange, Inc.; Financial Industry Regulatory Authority, Inc., International Securities Exchange, LLC; The NASDAQ Stock Market LLC; National Stock Exchange, Inc.; New York Stock Exchange LLC; NYSE Arca, Inc.; and Philadelphia Stock Exchange, Inc. (n/k/a NASDAQ OMX PHLX, Inc.).

[4] 17 CFR 242.608(b)(3)(ii).

Commission that such action is necessary or appropriate in the public interest, for the protection of investors, or the maintenance of fair and orderly markets, to remove impediments to, and perfect the mechanisms of, a national market system or otherwise in furtherance of the purposes of the Act. The Commission is publishing this notice to solicit comments from interested persons on the proposed Twelfth Charges Amendment to the CTA Plan.

I. Rule 608(a)

A. Description and Purpose of the Amendment

Schedule A–1 of Exhibit E to the CTA Plan sets forth the fees applicable to CTA Network A market data display services. The amendment proposes to delete from that schedule the monthly $30 nonprofessional subscriber ticker display charge. That charge applied to a nonprofessional subscriber's receipt of a Network A ticker feed from a ticker network that Network A formerly maintained. Network A phased out that ticker network a number of years ago, but the Participants did not delete the charge from the fee schedule once they completed the phaseout. The Network A Participants have not imposed the nonprofessional subscriber ticker fee since then.

The text of the proposed Amendment is available on the CTA's Web site (*http://www.nysedata.com/cta*), at the principal office of the CTA, and at the Commission's Public Reference Room.

B. Additional Information Required by Rule 608(a)

1. Governing or Constituent Documents

Not applicable.

2. Implementation of the Amendments

Because the Amendment constitutes a ''Ministerial Amendment'' under clause (ii) of Section IV(b) of the CTA Plan, the Chairman of CTA may submit this amendment to the Commission on behalf of the CTA Plan Participants. Because the Participants designate the Amendment as concerned solely with the administration of the Plan, the Amendment becomes effective upon filing with the Commission.

3. Development and Implementation Phases

Not applicable.

4. Analysis of Impact on Competition

The proposed Amendment does not impose any burden on competition that is not necessary or appropriate in furtherance of the purposes of the Act. The Participants do not believe that the proposed Amendment introduces terms that are unreasonably discriminatory for the purposes of Section 11A(c)(1)(D) of the Act.[5]

5. Written Understanding or Agreements Relating to Interpretation of, or Participation in, Plan

Not applicable.

6. Approval by Sponsors in Accordance With Plan

See Item I.B(2) above.

7. Description of Operation of Facility Contemplated by the Proposed Amendment

a. Terms and Conditions of Access

Not applicable.

b. Method of Determination and Imposition, and Amount of, Fees and Charges

See Item I.A above.

c. Method of Frequency of Processor Evaluation

Not applicable.

d. Dispute Resolution

Not applicable.

II. Rule 601(a)

A. Equity Securities for Which Transaction Reports Shall be Required by the Plan

Not applicable.

B. Reporting Requirements

Not applicable.

C. Manner of Collecting, Processing, Sequencing, Making Available and Disseminating Last Sale Information

Not applicable.

D. Manner of Consolidation

Not applicable.

E. Standards and Methods Ensuring Promptness, Accuracy and Completeness of Transaction Reports

Not applicable.

F. Rules and Procedures Addressed to Fraudulent or Manipulative Dissemination

Not applicable.

G. Terms of Access to Transaction Reports

Not applicable.

H. Identification of Marketplace Execution

Not applicable.

[5] 15 U.S.C. 78k-1(c)(1)(D).

III. Solicitation of Comments

Interested persons are invited to submit written data, views, and arguments concerning the foregoing, including whether the proposed Plan Amendment is consistent with the Act. Comments may be submitted by any of the following methods:

Electronic Comments

- Use the Commission's Internet comment form (*http://www.sec.gov/rules/sro.shtml*); or
- Send an e-mail to *rule-comments@sec.gov.* Please include File Number SR–CTA–2009–01 on the subject line.

Paper Comments

- Send paper comments in triplicate to Elizabeth M. Murphy, Secretary, Securities and Exchange Commission, 100 F Street, NE., Washington, DC 20549–1090.

All submissions should refer to File Number SR–CTA–2009–01. This file number should be included on the subject line if e-mail is used. To help the Commission process and review your comments more efficiently, please use only one method. The Commission will post all comments on the Commission's Internet Web site (*http://www.sec.gov/rules/sro.shtml*). Copies of the submission, all subsequent amendments, all written statements with respect to the proposed Plan Amendment that are filed with the Commission, and all written communications relating to the proposed Plan Amendment between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for inspection and copying in the Commission's Public Reference Room, 100 F Street, NE., Washington, DC 20549, on official business days between the hours of 10 a.m. and 3 p.m. Copies of such filing also will be available for inspection and copying at the principal office of the CTA. All comments received will be posted without change; the Commission does not edit personal identifying information from submissions. You should submit only information that you wish to make publicly available. All submissions should refer to File Number SR–CTA–2009–01 and should be submitted on or before August 17, 2009.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.[6]

Florence E. Harmon,

Deputy Secretary.

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SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–60349; File No. SR–BX–2009–035]

Self-Regulatory Organizations; NASDAQ OMX BX, Inc.; Notice of Filing and Immediate Effectiveness of Proposed Rule Change To Establish Procedures To Prevent Information Advantages Resulting From the Affiliation Between BOX and NOS

July 20, 2009.

Pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 (''Act''),[1] and Rule 19b–4 thereunder,[2] notice is hereby given that on July 17, 2009, NASDAQ OMX BX, Inc. (the ''Exchange'') filed with the Securities and Exchange Commission (''Commission'' or ''SEC'') the proposed rule change as described in Items I, II, and III below, which Items have been prepared by the Exchange. The Exchange has designated the proposed rule change as constituting a non-controversial rule change under Rule 19b–4(f)(6) under the Act,[3] which renders the proposal effective upon filing with the Commission. The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

The Exchange proposes a rule change to establish procedures designed to prevent potential informational advantages resulting from the affiliation between the Boston Options Exchange (''BOX''), a facility of the Exchange, and NASDAQ Options Services, LLC (''NOS''), a registered broker-dealer and a BOX market participant. The text of the proposed rule change is available from the principal office of the Exchange, at the Commission's Public Reference Room and also on the Exchange's Internet Web site at *http://nasdaqomxbx.cchwallstreet.com/NASDAQOMXBX/Filings/.*

II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, the Exchange included statements concerning the purpose of and basis for the proposed rule change and discussed any comments it received on the proposed rule change. The text of these statements may be examined at the places specified in Item IV below. The Exchange has prepared summaries, set forth in Sections A, B, and C below, of the most significant aspects of such statements.

A. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

1. Purpose

The NASDAQ OMX Group, Inc. (''NASDAQ OMX'') acquired the Exchange in August 2008. Prior to the acquisition, the Exchange owned a 21.87% interest in Boston Options Exchange Group, LLC (''BOX LLC''), the operator of BOX, a facility of the Exchange. Boston Options Exchange Regulation, LLC (''BOXR'') is a wholly-owned subsidiary of the Exchange, to which the Exchange has delegated, pursuant to a delegation plan, certain self-regulatory responsibilities related to BOX.

At the closing of the acquisition by NASDAQ OMX, the Exchange transferred its interest in BOX LLC to MX US, a wholly-owned subsidiary of the Montreal Exchange Inc. Although the Exchange no longer holds an ownership interest in BOX LLC, it continues to hold self-regulatory obligations with respect to BOX. The Exchange, together with BOXR, retains regulatory control over BOX and the Exchange, as the SRO, remains responsible for ensuring compliance with the federal securities laws and all applicable rules and regulations.

NASDAQ OMX also currently indirectly owns NASDAQ Options Services, LLC (''NOS''), a registered broker-dealer and a BOX market participant. Thus, NOS is deemed an affiliate of the Exchange, BOX and BOXR.

The Exchange is proposing that NOS be permitted to route certain orders from The NASDAQ Option Market (''NOM'') to BOX without checking the NOM book prior to routing. NOM is an options market operated by The NASDAQ Stock Market (the ''NASDAQ Exchange'') and NOS is the approved outbound routing facility of the NASDAQ Exchange for NOM. With the exception of Exchange Direct Orders, all routable orders for options that are trading on NOM check the NOM book prior to routing. In addition, NOS also routes orders in options that are not trading on NOM (referred to in the NOM Rules as ''Non-System Securities''). When routing orders in options that are not listed and open for trading on NOM, NOS is not regulated as a facility of the NASDAQ Exchange but rather as a broker-dealer regulated by its designated examining authority. As provided by Chapter IV, Section 5 of the NOM Rules, all orders routed by NOS under these circumstances are routed to away markets that are at the best price, and solely on an immediate-or-cancel basis.

Under NOM Rule Chapter VI, Section 11: (1) NOM routes orders in options via NOS, which serves as the sole ''routing facility'' of NOM; (2) the sole function of the routing facility is to route orders in options to away markets pursuant to NOM rules, solely on behalf of NOM; (3) NOS is a member of an unaffiliated self-regulatory organization, which is the designated examining authority for the broker-dealer; (4) the routing facility is subject to regulation as a facility of the NASDAQ Exchange, including the requirement to file proposed rule changes under Section 19 of the Act; (5) NOM must establish and maintain procedures and internal controls reasonably designed to adequately restrict the flow of confidential and proprietary information between the NASDAQ Exchange and its facilities (including the routing facility), and any other entity; and (6) the books, records, premises, officers, directors, agents, and employees of the routing facility, as a facility of the NASDAQ Exchange, shall be deemed to be the books, records, premises, officers, directors, agents, and employees of the NASDAQ Exchange for purposes of and subject to oversight pursuant to the Act, and the books and records of the routing facility, as a facility of the NASDAQ Exchange, shall be subject at all times to inspection and copying by the NASDAQ Exchange and the Commission.

The Commission has approved NOS's affiliation with the Exchange subject to the conditions that: (1) NOS is a facility of the NASDAQ Exchange; (2) use of NOS's routing function by NASDAQ Exchange members is optional[4] and (3)

[6] 17 CFR 200.30–3(a)(12).

[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b–4.

[3] 17 CFR 240.19b–4(f)(6).

[4] Because only NASDAQ Exchange members who are Options Participants may enter orders into NOM, it also follows that routing by NOS is available only to NASDAQ Exchange members who are Options Participants. Pursuant to Chapter I, Section 1(a)(40) of the NOM Rules, the term ''Options Participant'' means a firm, or organization that is registered with the NASDAQ Exchange for

Continued

NOS does not provide routing of orders in options from NOM to the Exchange or any trading facilities thereof, unless such orders first attempt to access any liquidity on the NOM book.[5]

The NASDAQ Exchange has filed a proposed rule change to modify the last of these conditions to permit NOS to route Exchange Direct Orders in NOM system securities to BOX without checking the NOM book prior to routing.[6] Exchange Direct Orders are orders that route directly to other options markets on an immediate-or-cancel basis without first checking the NOM book for liquidity.[7] In addition, the proposed rule change would permit the routing by NOS of orders (including Exchange Direct Orders) in NOM non-system securities from NOM to BOX.

The principles that govern the routing of orders to an exchange by an affiliated broker-dealer are well-established. The Exchange and other exchanges previously have adopted rules that permit exchanges to accept routing of inbound orders from affiliates, subject to certain limitations and conditions intended to address the Commission's concerns regarding affiliation.[8] In the orders approving these rule changes, the Commission noted its concerns about potential informational advantages and conflicts of interest between an exchange's self-regulatory obligations and its commercial interest when the exchange is affiliated with one of its members, but determined that the limitations and conditions proposed in the rule changes were sufficient to mitigate its concerns.

To appropriately address the concerns raised by the Commission regarding the potential for conflicts of interest and informational advantages, the Exchange is proposing certain restrictions and undertakings. These commitments are consistent with the undertakings made by the NASDAQ Exchange and the Exchange in adopting rule changes to permit the Exchange's equity market to accept routing of inbound orders from NASDAQ Execution Services, Inc. in its operation as the routing facility of the NASDAQ Exchange.[9]

In order to manage the concerns raised by the Commission regarding conflicts of interest in instances where a broker-dealer is affiliated with an exchange to which it is routing orders, the Exchange notes that, with respect to orders routed to BOX by NOS, NOS is subject to independent oversight and enforcement by FINRA, an unaffiliated SRO that is NOS's designated examining authority. In this capacity, FINRA is responsible for examining NOS with respect to its books and records and capital obligations and also has the responsibility for reviewing NOS's compliance with applicable trading rules. In addition, the Exchange has entered into a regulatory services agreement with FINRA under which FINRA staff will review NOS's compliance with BOX's rules through FINRA's examination program. FINRA and the Exchange will also monitor NOS for compliance with BOX's trading rules, subject, of course, to Commission oversight of the regulatory program of the Exchange and FINRA. The Exchange will, however, retain ultimate responsibility for enforcing its rules with respect to NOS except to the extent that they are covered by an agreement with FINRA pursuant to Rule 17d–2,[10] in which case regulatory responsibility will be allocated to FINRA as provided in Rule 17d–2(d).

Furthermore, in order to minimize the potential for conflicts of interest, the Exchange and FINRA will collect and maintain all alerts, complaints, investigations and enforcement actions in which NOS (in routing orders to BOX) is identified as a participant that has potentially violated applicable Commission or Exchange rules. The Exchange and FINRA will retain these records in an easily accessible manner in order to facilitate any potential review conducted by the Commission's Office of Compliance Inspections and Examinations. FINRA will then provide a report to BOXR's Chief Regulatory Officer, on at least a quarterly basis, which (i) quantifies all alerts (of which the Exchange and FINRA become aware) that identify NOS as a participant that has potentially violated an Exchange or Commission rule and (ii) quantifies the number of all investigations that identify NOS as a participant that has potentially violated an Exchange or Commission rule.[11]

In order to address the Commission's concerns about potential for information advantages that could place an affiliated broker-dealer at a competitive advantage vis-à-vis other non-affiliated broker-dealers, the Exchange is proposing to amend Chapter XXXIX, Section 2 of the Grandfathered Rules of the Exchange. New Chapter XXXIX, Section 2(c) of the Grandfathered Rules as it applies to BOX will require the implementation of policies and procedures that are reasonably designed to prevent NOS from acting on non-public information regarding BOX's systems prior to the time that such information is made available generally to all market participants of such entity performing inbound routing functions. These policies and procedures would include systems development protocols to facilitate an audit of the efficacy of these policies and procedures.

Specifically, Chapter XXXIX, Section 2(c) shall provide as follows:

> The NASDAQ OMX Group, Inc., which owns NASDAQ Options Services, LLC and is affiliated with BOX through its ownership of the Exchange, of which BOX is a facility, shall establish and maintain procedures and internal controls reasonably designed to ensure that NASDAQ Options Services, LLC does not develop or implement changes to its system on the basis of non-public information regarding planned changes to BOX systems, obtained as a result of its affiliation with BOX, until such information is available generally to similarly situated BOX participants in connection with the provision of inbound routing to BOX.

In addition, existing NOM Rule Chapter VI, Section 11(e) requires NOS to establish and maintain procedures and internal controls reasonably designed to adequately restrict the flow of confidential and proprietary information between the NASDAQ Exchange and its facilities (including NOS) and any other entity.

The Exchange believes these measures will effectively address the concerns identified by the Commission regarding the potential for informational advantages favoring NOS vis-à-vis other BOX participants.

b. Pilot Period

The Exchange is proposing that NOS route Exchange Direct Orders and orders in NOM non-system securities inbound to the Exchange from NOM for a pilot period of 12 months from the operative date of this filing. The Exchange

purposes of participating in options trading on NOM as a ''Nasdaq Options Order Entry Firm'' or ''Nasdaq Options Market Maker''.

[5] *See* Securities Exchange Act Release No. 58324 (August 7, 2008), 73 FR 46936 (August 12, 2008) (SR–BSE–2008–02; SR–BSE–2008–23; SR–BSE–2008–25; SR–BSECC–2008–01).

[6] SR–NASDAQ–2009–065.

[7] NOM Rule Chapter VI, Section (1)(e)(7).

[8] *See* Securities Exchange Act Release Nos. 59154 (December 23, 2008), 73 FR 80468 (December 31, 2008) (SR–BSE–2008–48); 59010 (November 24, 2008), 73 FR 73373 (December 2, 2008) (SR–NYSEArca–2008–130); 58681 (September 29, 2008), 73 FR 58285 (October 6, 2008) (SR–NYSEArca–2008–90); 58680 (September 29, 2008), 73 FR 58283 (October 6, 2008) (SR–NYSE–2008–76); 58673 (September 29, 2008), 73 FR 57707 (October 3, 2008) (SR–Amex–2008–62) (collectively, the ''Affiliation Orders'').

[9] *See* Securities Exchange Act Release Nos. 59153 (December 23, 2008), 73 FR 80485 (December 31, 2008) (SR–NASDAQ–2008–098); 59154 (December 23, 2008), 73 FR 80468 (December 31, 2008) (SR–BSE–2008–48).

[10] 17 CFR 240.17d–2.

[11] The Exchange, FINRA and SEC staff may agree going forward to reduce the number of applicable or relevant surveillances that form the scope of the agreed upon report.

believes that this pilot period is of sufficient length to permit both the Exchange and the Commission to assess the impact of the rule change described herein.

2. Statutory Basis

The Exchange believes that the proposed rule change is consistent with the provisions of Section 6 of the Act,[12] in general, and with Section 6(b)(5) of the Act,[13] in particular, in that the proposal is designed to prevent fraudulent and manipulative acts and practices, to promote just and equitable principles of trade, to foster cooperation and coordination with persons engaged in regulating, clearing, settling, processing information with respect to, and facilitating transactions in securities, to remove impediments to and perfect the mechanism of a free and open market and a national market system, and, in general, to protect investors and the public interest. The proposed rule change would permit inbound routing of orders from NOM to BOX through NOS while minimizing the potential for conflicts of interest and informational advantages involved where a broker-dealer is affiliated with an exchange facility to which it is routing orders.

B. Self-Regulatory Organization's Statement on Burden on Competition

The Exchange does not believe that the proposed rule change will result in any burden on competition that is not necessary or appropriate in furtherance of the purposes of the Act, as amended.

C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received From Members, Participants, or Others

Written comments were neither solicited nor received.

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

The foregoing rule change has become effective pursuant to Section 19(b)(3)(A) of the Act [14] and Rule 19b–4(f)(6) [15] thereunder in that it effects a change that: (i) Does not significantly affect the protection of investors or the public interest; (ii) does not impose any significant burden on competition; and (iii) by its terms, does not become operative for 30 days after the date of the filing, or such shorter time as the Commission may designate if consistent with the protection of investors and the public interest.

In its recent guidance on the proposed rules of Self-Regulatory Organizations (''SROs''),[16] the Commission concluded that filings based on the rules of another SRO already approved by the Commission are eligible for immediate effectiveness under Rule 19b–4(f)(6). The Commission noted that ''a proposed rule change appropriately may be filed as an immediately effective rule so long as it is based on and similar to another SRO's rule and each policy issue raised by the proposed rule (i) has been considered previously by the Commission when the Commission approved another exchange's rule (that was subject to notice and comment), and (ii) the rule change resolves such policy issue in a manner consistent with such prior approval.'' [17] The Exchange believes the proposed rule change is ''based on and similar to'' the rule changes recently approved in the Affiliation Orders and furthers efforts to effectively address the concerns previously identified by the Commission regarding the potential for conflicts of interest and informational advantages when an exchange is affiliated with one of its market participants.[18] This rule proposal, which is effective upon filing with the Commission, shall become operative 30 days after the date of the filing.

At any time within 60 days of the filing of the proposed rule change, the Commission may summarily abrogate such rule change if it appears to the Commission that such action is necessary or appropriate in the public interest, for the protection of investors, or otherwise in furtherance of the purposes of the Act.

IV. Solicitation of Comments

Interested persons are invited to submit written data, views, and arguments concerning the foregoing, including whether the proposed rule change is consistent with the Act. Comments may be submitted by any of the following methods:

Electronic Comments

- Use the Commission's Internet comment form (*http://www.sec.gov/rules/sro.shtml*); or
- Send an e-mail to *rule-comments@sec.gov*. Please include File Number SR–BX–2009–035 on the subject line.

Paper Comments

- Send paper comments in triplicate to Elizabeth M. Murphy, Secretary, Securities and Exchange Commission, 100 F Street, NE., Washington, DC 20549–1090.

All submissions should refer to File Number SR–BX–2009–035. This file number should be included on the subject line if e-mail is used. To help the Commission process and review your comments more efficiently, please use only one method. The Commission will post all comments on the Commission's Internet Web site (*http://www.sec.gov/rules/sro.shtml*). Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for inspection and copying in the Commission's Public Reference Room, 100 F Street, NE., Washington, DC 20549 on official business days between the hours of 10 a.m. and 3 p.m. Copies of the filing also will be available for inspection and copying at the principal office of the Exchange. All comments received will be posted without change; the Commission does not edit personal identifying information from submissions. You should submit only information that you wish to make available publicly. All submissions should refer to File Number SR–BX–2009–035 and should be submitted on or before August 17, 2009.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.[19]

Florence E. Harmon,

Deputy Secretary.

[FR Doc. E9–17765 Filed 7–24–09; 8:45 am]

BILLING CODE 8010–01–P

[12] 15 U.S.C. 78f.

[13] 15 U.S.C. 78f(b)(5).

[14] 15 U.S.C. 78s(b)(3)(A).

[15] 17 CFR 240.19b–4(f)(6).

[16] Securities Exchange Act Release No. 58092 (July 3, 2008), 73 FR 40144 (July 11, 2008).

[17] *Id.* at 40149.

[18] *See* the Affiliation Orders, *supra* note 8.

[19] 17 CFR 200.30–3(a)(12).

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–60354; File No. SR–NASDAQ–2009–065]

Self-Regulatory Organizations; the NASDAQ Stock Market LLC; Notice of Filing and Immediate Effectiveness of Proposed Rule Change, as Modified by Amendment Nos. 1 and 2 Thereto, To Modify Routing of Orders From NASDAQ Options Market to an Affiliate Exchange

July 21, 2009.

Pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 (''Act''),[1] and Rule 19b–4 thereunder,[2] notice is hereby given that on June 29, 2009, The NASDAQ Stock Market LLC (''Nasdaq'') filed with the Securities and Exchange Commission (''Commission'') the proposed rule change as described in Items I, II, and III below, which Items have been prepared by Nasdaq. On July 17, 2009, Nasdaq filed Amendment No. 1 to the proposed rule change. On July 17, 2009, Nasdaq filed Amendment No. 2 to the proposed rule change.[3] Nasdaq has designated the proposed rule change as constituting a non-controversial rule change under Rule 19b–4(f)(6) under the Act,[4] which renders the proposal effective upon filing with the Commission. The Commission is publishing this notice to solicit comments on the proposed rule change, as amended, from interested persons.

I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

Nasdaq proposes to amend Chapter VI, Sections 1(e)(7) and 11(b) of the Rules of the NASDAQ Options Market (''NOM'') to modify the restriction on routing of certain orders to a facility of an exchange that is an affiliate of NOM.

The text of the proposed rule change is below. Proposed new language is *italicized*; proposed deletions are in brackets.

Options Rules

Chapter VI Trading System

* * * * *

Sec. 1 Definitions

The following definitions apply to Chapter VI for the trading of options listed on NOM.

(a)–(d) No change.

(e) The term ''Order Type'' shall mean the unique processing prescribed for designated orders that are eligible for entry into the System, and shall include:

(1)–(6) No change.

(7) ''Exchange Direct Orders'' are orders that are directed to an exchange other than NOM as directed by the entering party without checking the NOM book. If unexecuted, the order (or unexecuted portion thereof) shall be returned to the entering party. This order type may only be used for orders with time-in-force parameters of IOC.

Directed Orders may not be directed to a facility of an exchange that is an affiliate of Nasdaq *other than the Boston Options Exchange.*

(f)–(h) No change.

Sec. 11 Order Routing

(a) No change.

(b) For Non-System securities, the order routing process shall be available to Participants from 9:30 a.m. Eastern Time until market close and shall route orders based on the participant's instructions. Notwithstanding the foregoing, the order routing process will not be available to route Non-System Securities to a facility of an exchange that is an affiliate of Nasdaq *other than the Boston Options Exchange.*

(c)–(e) No change.

* * * * *

II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, Nasdaq included statements concerning the purpose of and basis for the proposed rule change and discussed any comments it received on the proposed rule change. The text of these statements may be examined at the places specified in Item IV below. Nasdaq has prepared summaries, set forth in Sections A, B, and C below, of the most significant aspects of such statements.

A. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

1. Purpose

a. Background

The NASDAQ OMX Group, Inc. (''NASDAQ OMX''), a Delaware corporation, acquired the Boston Stock Exchange (''BSE'') in August 2008. Prior to the acquisition, BSE owned a 21.87% interest in Boston Options Exchange Group, LLC, the operator of the Boston Options Exchange facility (''BOX''). Boston Options Exchange Regulation, LLC (''BOXR'') was a wholly-owned subsidiary of BSE, to which BSE was delegated, pursuant to a delegation plan, certain self-regulatory responsibilities related to BOX.

In connection with the closing of the acquisition by NASDAQ OMX, BSE transferred its interest in Boston Options Exchange Group to MX US, a wholly-owned subsidiary of the Montreal Exchange Inc. NASDAQ OMX renamed BSE as NASDAQ OMX BX, Inc. (''BX'') and relaunched its equity trading market as the NASDAQ OMX BX Equities Market in January 2009. Although BX no longer holds an ownership interest in Boston Options Exchange Group, it continues to hold self-regulatory obligations with respect to BOX, a facility of BX. BX, together with BOXR, retains regulatory control over BOX and BX, as the SRO, remains responsible for ensuring compliance with the federal securities laws and all applicable rules and regulations.

NASDAQ OMX also currently indirectly owns NASDAQ Options Services, LLC (''NOS'' or the ''Routing Facility''), a registered broker-dealer and a BOX market participant. Thus, NOS is deemed an affiliate of BX, BOX and BOXR.

b. Affiliation and Order Routing

Nasdaq is proposing that NOS be permitted to route Exchange Direct Orders in System Securities[5] to BOX without checking the NOM book prior to routing. Exchange Direct Orders are orders that route directly to other options markets on an immediate-or cancel basis without first checking the NOM book for liquidity.[6] In addition, the proposed rule change would permit the routing by NOS of orders (including Exchange Direct Orders) in Non-System Securities from NOM to BOX.

NOS is the approved outbound routing facility of Nasdaq for NOM. Under NOM Rule Chapter VI, Section 11: (1) NOM routes orders in options via NOS, which serves as the sole ''Routing Facility'' of NOM; (2) the sole function of the Routing Facility is to route orders in options to away markets pursuant to NOM rules, solely on behalf of NOM; (3) NOS is a member of an unaffiliated self-regulatory organization, which is the designated examining authority for the broker-dealer; (4) the Routing Facility is subject to regulation as a facility of Nasdaq, including the requirement to file proposed rule changes under Section 19 of the Act; (5) NOM must establish and maintain procedures and

[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b–4.

[3] In Amendment Nos. 1 and 2, Nasdaq made minor non-substantive corrections to the rule text.

[4] 17 CFR 240.19b–4(f)(6).

[5] Pursuant to Chapter VI, Section 1(b), ''System Securities'' are all options that are currently trading on NOM pursuant to Chapter IV of the NOM rules. All other options are ''Non-System Securities.''

[6] Chapter VI, Section (1)(e)(7) of the NOM Rules.

internal controls reasonably designed to adequately restrict the flow of confidential and proprietary information between Nasdaq and its facilities (including the Routing Facility), and any other entity; and (6) the books, records, premises, officers, directors, agents, and employees of the Routing Facility, as a facility of Nasdaq, shall be deemed to be the books, records, premises, officers, directors, agents, and employees of Nasdaq for purposes of and subject to oversight pursuant to the Act, and the books and records of the Routing Facility, as a facility of Nasdaq, shall be subject at all times to inspection and copying by Nasdaq and the Commission.

The Commission has approved NOS's affiliation with BX subject to the conditions that: (1) NOS remains a facility of Nasdaq; (2) use of NOS's routing function by Nasdaq members continues to be optional[7] and (3) NOS does not provide routing of orders in options from NOM to BX or any trading facilities thereof, unless such orders first attempt to access any liquidity on the NOM book.[8]

In order to modify the conditions noted above regarding the operation of NOS and allow NOS to route Exchange Direct Orders directly to BOX, Nasdaq is proposing to amend the restriction in Chapter VI, Section (1)(e)(7) of the NOM Rules that prohibit the routing of Exchange Direct Orders to a facility of an exchange that is an affiliate of Nasdaq. Under the proposed rule change, an Options Participant could enter an order into NOM designated as an ''Exchange Direct Order'' with instructions to route that order directly to BOX without first checking the NOM book.

In addition, Nasdaq is proposing to amend Chapter VI, Section 11(b) of the NOM Rules to permit the routing of orders in Non-System Securities via NOS from NOM to BOX. As a result, orders in Non-System Securities that are routed to away markets under normal procedures could be routed to BOX, as well as those that are entered as Exchange Direct Orders with instructions to route directly to BOX.

Other exchanges previously have adopted rules that permit exchanges to accept routing of inbound orders from affiliates, subject to certain limitations and conditions intended to address the Commission's concerns regarding affiliation.[9] In the orders approving these rule changes, the Commission noted its concerns about potential informational advantages and conflicts of interest between an exchange's self-regulatory obligations and its commercial interest when the exchange is affiliated with one of its members, but determined that the proposed limitations and conditions were sufficient to mitigate its concerns.

With respect to concerns identified by the Commission regarding the potential for informational advantages favoring NOS vis-à-vis other non-affiliated BOX market participants, these concerns are addressed by existing NOM Rule Chapter VI, Section 11(e) which requires NOS to establish and maintain procedures and internal controls reasonably designed to adequately restrict the flow of confidential and proprietary information between Nasdaq and its facilities (including NOS) and any other entity.

In addition, BX is proposing a rule change and certain undertakings intended to manage the flow of confidential and proprietary information between NOS and BOX and to minimize potential conflicts of interest.[10]

2. Statutory Basis

Nasdaq believes that the proposed rule change is consistent with the provisions of Section 6 of the Act,[11] in general, and with Section 6(b)(5) of the Act,[12] in particular, in that the proposal is designed to prevent fraudulent and manipulative acts and practices, to promote just and equitable principles of trade, to foster cooperation and coordination with persons engaged in regulating, clearing, settling, processing information with respect to, and facilitating transactions in securities, to remove impediments to and perfect the mechanism of a free and open market and a national market system, and, in general, to protect investors and the public interest. The proposed rule change would permit routing of Exchange Direct Orders from NOM to BOX through NOS while minimizing the potential for conflicts of interest and informational advantages involved where a broker-dealer is affiliated with an exchange facility to which it is routing orders.

B. Self-Regulatory Organization's Statement on Burden on Competition

Nasdaq does not believe that the proposed rule change will result in any burden on competition that is not necessary or appropriate in furtherance of the purposes of the Act, as amended.

C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received From Members, Participants, or Others

Written comments were neither solicited nor received.

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

The foregoing rule change has become effective pursuant to Section 19(b)(3)(A) of the Act[13] and Rule 19b–4(f)(6)[14] thereunder in that it effects a change that: (i) Does not significantly affect the protection of investors or the public interest; (ii) does not impose any significant burden on competition; and (iii) by its terms, does not become operative for 30 days after the date of the filing, or such shorter time as the Commission may designate if consistent with the protection of investors and the public interest.

In its recent guidance on the proposed rules of Self-Regulatory Organizations (''SROs''),[15] the Commission concluded that filings based on the rules of another SRO already approved by the Commission are eligible for immediate effectiveness under Rule 19b–4(f)(6). The Commission noted that ''a proposed rule change appropriately may be filed as an immediately effective rule so long as it is based on and similar to another SRO's rule and each policy issue raised by the proposed rule (i) has been considered previously by the Commission when the Commission approved another exchange's rule (that was subject to notice and comment), and (ii) the rule change resolves such policy issue in a manner consistent with

[7] Because only Nasdaq members who are Options Participants may enter orders into NOM, it also follows that routing by NOS is available only to Nasdaq members who are Options Participants. Pursuant to Chapter I, Section 1(a)(40) of the NOM Rules, the term ''Options Participant'' means a firm, or organization that is registered with Nasdaq for purposes of participating in options trading on NOM as a ''Nasdaq Options Order Entry Firm'' or ''Nasdaq Options Market Maker''.

[8] *See* Securities Exchange Act Release No. 58324 (August 7, 2008), 73 FR 46936 (August 12, 2008) (SR–BSE–2008–02; SR–BSE–2008–23; SR–BSE–2008–25; SR–BSECC–2008–01).

[9] *See* Securities Exchange Act Release Nos. 59153 (December 23, 2008), 73 FR 80485 (December 31, 2008) (SR–NASDAQ–2008–098); 59154 (December 23, 2008), 73 FR 80468 (December 31, 2008) (SR–BSE–2008–48); 59010 (November 24, 2008), 73 FR 73373 (December 2, 2008) (SR–NYSEArca–2008–130); 58681 (September 29, 2008), 73 FR 58285 (October 6, 2008) (SR–NYSEArca–2008–90); 58680 (September 29, 2008), 73 FR 58283 (October 6, 2008) (SR–NYSE–2008–76); 58673 (September 29, 2008), 73 FR 57707 (October 3, 2008) (SR–Amex–2008–62) (collectively, the ''Affiliation Orders'').

[10] *See* SR–BX–2009–35.

[11] 15 U.S.C. 78f.

[12] 15 U.S.C. 78f(b)(5).

[13] 15 U.S.C. 78s(b)(3)(A).

[14] 17 CFR 240.19b–4(f)(6).

[15] Securities Exchange Act Release No. 58092 (July 3, 2008), 73 FR 40144 (July 11, 2008).

such prior approval.'' [16] Nasdaq believes the proposed rule change is ''based on and similar to'' the rule changes recently approved in the Affiliation Orders and furthers efforts to effectively address the concerns previously identified by the Commission regarding the potential for conflicts of interest and informational advantages when an exchange is affiliated with one of its market participants.[17]

At any time within 60 days of the filing of the proposed rule change, the Commission may summarily abrogate such rule change if it appears to the Commission that such action is necessary or appropriate in the public interest, for the protection of investors, or otherwise in furtherance of the purposes of the Act.[18]

IV. Solicitation of Comments

Interested persons are invited to submit written data, views, and arguments concerning the foregoing, including whether the proposed rule change is consistent with the Act. Comments may be submitted by any of the following methods:

Electronic Comments

- Use the Commission's Internet comment form (*http://www.sec.gov/rules/sro.shtml*); or
- Send an e-mail to *rule-comments@sec.gov.* Please include File Number SR–NASDAQ–2009–065 on the subject line.

Paper Comments

- Send paper comments in triplicate to Elizabeth M. Murphy, Secretary, Securities and Exchange Commission, 100 F Street, NE., Washington, DC 20549–1090.

All submissions should refer to File Number SR–NASDAQ–2009–065. This file number should be included on the subject line if e-mail is used. To help the Commission process and review your comments more efficiently, please use only one method. The Commission will post all comments on the Commission's Internet Web site (*http://www.sec.gov/rules/sro.shtml*). Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for inspection and copying in the Commission's Public Reference Room, 100 F Street, NE., Washington, DC 20549 on official business days between the hours of 10 a.m. and 3 p.m. Copies of the filing also will be available for inspection and copying at the principal office of Nasdaq. All comments received will be posted without change; the Commission does not edit personal identifying information from submissions. You should submit only information that you wish to make available publicly. All submissions should refer to File Number SR–NASDAQ–2009–065 and should be submitted on or before August 17, 2009.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.[19]

Florence E. Harmon,

Deputy Secretary.

[FR Doc. E9–17767 Filed 7–24–09; 8:45 am]

BILLING CODE 8010–01–P

[16] *Id.* at 40149.

[17] *See* the Affiliation Orders, *supra* note 8.

[18] For purposes of calculating the 60-day period within which the Commission may summarily abrogate the proposed rule change under Section 19(b)(3)(C) of the Act, the Commission considers the period to commence on July 17, 2009, the date on which Nasdaq submitted Amendment No. 2. *See* 15 U.S.C. 78s(b)(3)(C).

[19] 17 CFR 200.30–3(a)(12).

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–60353; File No. SR–CHX–2009–02]

Self-Regulatory Organizations; Chicago Stock Exchange, Inc.; Order Granting Approval of Proposed Rule Change Relating to the Rejection of Undisplayed Odd-Lot Orders From the Exchange's Matching System

July 21, 2009.

On June 2, 2009, the Chicago Stock Exchange, Inc. (''CHX'' or the ''Exchange'') filed with the Securities and Exchange Commission (''Commission''), pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 (''Act'') [1] and Rule 19b–4 thereunder,[2] a proposed rule change to: (1) Allow Exchange customers to specify whether odd-lot orders and unexecuted odd-lot remainders, that are not able to be immediately displayed, should remain in, or be rejected from, the Exchange's Matching System, and (2) add a generic routing rule to clarify how any orders that are rejected from the Exchange's Matching System, and routed away according to Participant instructions, will be handled. The proposed rule change was published for comment in the **Federal Register** on June 17, 2009.[3] The Commission received no comments on the proposed rule change. This order approves the proposed rule change.

The Exchange proposes to amend CHX Article 20, Rule 8 to allow Exchange Participants to specify whether odd-lot orders and unexecuted odd-lot remainders, that are not able to be immediately displayed, should remain in, or be rejected from, the Exchange's Matching System. This preference could be set by the Participant on both a default and order by order basis. Orders remaining in the Matching System will continue to be ranked at the price and time at which they were originally received. Orders that are rejected from the Matching System shall either be sent back to the order sender or be routed to another destination according to each Participant's instructions [4] or, if designated ''do not route,'' automatically cancelled. The Exchange also proposes that Participants that elect to have orders routed to another destination pursuant to this rule, or pursuant to Article 20, Rule 5 (''Prevention of Trade-throughs''), agree to be bound by such transactions.

In addition, the Exchange proposes to add a generic routing rule to clarify how any orders that are rejected from the Exchange's Matching System, and routed away according to Participant instructions, will be handled. The use of routing services is optional and is available only to exchange Participants. In such cases, the Participant will be responsible for ensuring that it has a relationship with its chosen destinations to permit the requested access. The Exchange shall not have responsibility for the handling of the order by the other destination, but will report any execution or cancellation of the order by the other destination to the Participant that submitted the order, will notify the other venue of any cancellations or changes to the order submitted by the order-sending Participant and, if requested by the Participant and its chosen destination, will flip any executions into the Participants account, as necessary, and

[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b–4.

[3] *See* Securities Exchange Act Release No. 60083 (June 10, 2009), 74 FR 28739.

[4] The Exchange notes that orders rejected in accordance with this rule will be routed in the same manner as those rejected under the NMS trade-through validation rule (Exchange Article 20, Rule 5, Interpretations and Policies .03), which has already been approved by the Commission.

report that second leg of the away-market transaction to clearing.[5]

The Exchange will provide its Routing Services pursuant to the proposed rule and three separate agreements, to the extent that they are applicable to a specific routing decision and deemed necessary by the Exchange and/or a third-party broker-dealer providing connectivity to other markets. The Exchange will provide such Routing Services in compliance with its rules and with the provisions of the Act and the rules thereunder, including, but not limited to, the requirements of Sections 6(b)(4)[6] and (5)[7] of the Act that the rules of a national securities exchange provide for the equitable allocation of dues, fees and other charges among its members and issues and other persons using its facilities, and not be designed to permit unfair discrimination between customers, issuers, brokers or dealers.

The Commission finds that the proposed rule change is consistent with the requirements of the Act and the rules and regulations thereunder that are applicable to a national securities exchange.[8] In particular, the Commission believes that the proposed rule change is consistent with Section 6(b)(5) of the Act,[9] in that it is designed to promote just and equitable principles of trade, to foster cooperation and coordination with persons engaged in regulating, clearing, settling, processing information with respect to, and facilitating transactions in securities, to remove impediments to and perfect the mechanism of a free and open market and a national market system, and, in general, to protect investors and the public interest.

The Commission believes that the proposed rule change may increase the efficiency of Exchange Participants in seeking to execute their customers' orders that are ineligible for execution or display in the Exchange's Matching System. In particular, odd-lot orders that are not immediately displayed in the Matching System or orders that otherwise would be cancelled back to a participant may be sent directly to a destination chosen by the participant for handling. The Commission notes that the Exchange's proposed generic routing rule will operate in the same manner as its current routing rule for orders rejected by the Exchange's Matching System under its NMS trade-through validation rule,[10] which was previously approved by the Commission.[11]

It is therefore ordered, pursuant to Section 19(b)(2) of the Act,[12] that the proposed rule change (SR–CHX–2009–02) be, and it hereby is, approved.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.[13]

Florence E. Harmon,

Deputy Secretary.

[FR Doc. E9–17766 Filed 7–24–09; 8:45 am]

BILLING CODE 8010–01–P

[5] For example, if the Exchange routes a participant's buy order to the participant's chosen destination (Router ABC) and Router ABC gets an execution of that order in another market against market maker XYZ, the first leg of the transaction (ABC buying from XYZ) will be reported to clearing by the other market. The Router ABC would send an execution report back to the Exchange (for routing to the original order-sending participant). Under this proposal, if the participant and Router ABC had requested, the Exchange would take the execution report and create a clearing-only record, flipping the execution from Router ABC's account to the account of the order-sending participant (ABC selling to the order-sending participant).

[6] 15 U.S.C. 78f(b)(4)

[7] 15 U.S.C. 78f(b)(5)

[8] In approving this rule, the Commission notes that it has considered the proposed rule's impact on efficiency, competition, and capital formation. *See* 15 U.S.C. 78c(f).

[9] 15 U.S.C. 78f(b)(5).

[10] *See* CHX Rules Article 20, Rule 5, Interpretations and Policies .03.

[11] *See* Securities Exchange Act Release No. 54963 (December 19, 2006), 71 FR 77834 (December 17, 2006) (SR–CHX–2006–30).

[12] 15 U.S.C. 78s(b)(2).

[13] 17 CFR 200.30–3(a)(12).

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–60348; File No. SR–FINRA–2009–019]

Self-Regulatory Organizations; Financial Industry Regulatory Authority, Inc.; Order Approving Proposed Rule Change To Adopt FINRA Rules 1010 (Electronic Filing Requirements for Uniform Forms) and 2263 (Arbitration Disclosure to Associated Persons Signing or Acknowledging Form U4) in the Consolidated FINRA Rulebook

July 20, 2009.

I. Introduction

On April 7, 2009, the Financial Industry Regulatory Authority, Inc. (''FINRA'') (f/k/a ''NASD'') filed with the Securities and Exchange Commission (''Commission''), pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 (''Act''),[1] and Rule 19b–4 thereunder,[2] a proposed rule change to adopt, subject to certain amendments, NASD Rule 1140 (Electronic Filing Rules) as new FINRA Rule 1010 (Electronic Filing Requirements for Uniform Forms) and NASD Rule 3080 (Disclosure to Associated Persons When Signing Form U–4) as new FINRA Rule 2263 (Arbitration Disclosure to Associated Persons Signing or Acknowledging Form U4) in the consolidated FINRA rulebook. The proposal was published for comment in the **Federal Register** on April 24, 2009.[3] The Commission received one comment letter, on May 15, 2009, on the proposal.[4] FINRA responded to the commenter on July 8, 2009.[5] This order approves the proposed rule change.

II. Description of the Proposal

Proposed FINRA Rule 1010

NASD's Rule 1140 specifies that an electronic initial and transfer Form U4 must be based on a signed Form U4, but the rule does not expressly state that the signatures must be manual. The proposed rule would require that every initial Form U4 and every Form U4 filed to transfer a registered person's association from one firm to another firm be based on an original, manually-signed Form U4 provided to the member by the person on whose behalf the Form U4 is being filed.[6]

The proposed rule change also modifies the signature requirement with respect to amendments to disclosure information in the Form U4. NASD's Rule 1140 requires the associated person on whose behalf the filing is made to sign amendments to Form U4 that provide disclosure information. Proposed FINRA Rule 1010 would permit a firm to file amendments to the Form U4 disclosure information without obtaining the registered person's manual signature if the firm uses reasonable efforts to i) provide the registered person with a copy of the amended disclosure information before filing and ii) obtain the registered person's written acknowledgment that the information has been received and reviewed, which may be accomplished electronically, before filing.[7]

[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b–4.

[3] *See* Securities Exchange Act Release No. 59784 (April 17, 2009), 74 FR 18779 (April 24, 2009) (''Notice'').

[4] *See* letter to Florence E. Harmon, Deputy Secretary, Commission, from Bari Havlik, Senior Vice President and Chief Compliance Officer, Charles Schwab & Co., Inc., dated May 15, 2009 (''Schwab Letter'').

[5] *See* letter to Elizabeth M. Murphy, Secretary, Commission, from Patricia Albrecht, Assistant General Counsel, FINRA, dated July 8, 2009 (''Response Letter'').

[6] Member firms use the Central Registration Depository (CRD), a Web based system, to submit the form on behalf of the associated person by typing the person's name into the signature box on the electronic form.

[7] The member, as part of its recordkeeping requirements pursuant to Rule 17a–4(e)(1) under the Act, would be required to retain the written acknowledgment and make it available promptly upon request.

In the event the member is not able to obtain an associated person's manual signature or written acknowledgement of an amendment to disclosure information before filing the amended Form U4, the proposal would require that the member file disclosure information of which it has knowledge, and the member would enter ''Representative Refused to Sign/Acknowledge'' or ''Representative Not Available'' or a substantially similar phrase in the signature box of the electronic form. This change codifies the member's obligation in Article V, Section 2 of FINRA's By-Laws that every Form U4 be kept current.

Fourth, the proposed rule change incorporates the practice in the Web CRD of permitting administrative information (such as the addition of state or self-regulatory organization registrations, exam scheduling, and updates to residential, business, and personal history) to be amended on Form U4 without obtaining the associated person's signature.[8] If that occurs, the member must use reasonable efforts to provide the associated person with a copy of the amended administrative information that was filed.

Fifth, the proposal would permit the registered principal(s) or corporate officer(s) who is responsible for supervising a firm's electronic filings to delegate to another associated person, who need not be registered, the electronic filing of the member's forms via Web CRD. The principal(s) or corporate officer(s) may not, however, delegate any of his supervision, review or approval responsibilities and must take reasonable and appropriate action to ensure that all delegated electronic filing functions are properly executed and supervised.

Proposed FINRA Rule 2263

The proposed rule change transfers NASD Rule 3080 into the consolidated FINRA Rulebook as FINRA Rule 2263 with several minor changes. First, the proposed rule change amends the current title ''Disclosure to Associated Person When Signing Form U–4'' to ''Arbitration Disclosure to Associated Persons Signing or Acknowledging Form U4'' to clarify that the rule relates to arbitration disclosures. Second, proposed FINRA Rule 2263 clarifies that a member must provide the required arbitration disclosures whenever a member asks an associated person, pursuant to proposed FINRA Rule 1010, to manually sign an initial or amended Form U4, or to otherwise provide written acknowledgement, which may be electronic, of an amendment to the Form. Third, the proposed rule updates language to reflect amendments to FINRA's Code of Arbitration Procedure requiring arbitrators to provide an explained decision to the parties in eligible cases if there is a joint request by all parties at least twenty days before the first scheduled hearing date.[9]

III. Summary of Comments

Proposed FINRA Rule 1010(c)(3)

While the Schwab Letter generally supports the proposal, it expressed several concerns, including that the aspect of the proposed rule that requires the member to file amendments to U4 regarding disclosure information as to which it has knowledge, proposed FINRA Rule 1010(c)(3) would require a firm to file a Form U4 disclosure amendment when the firm may have inaccurate or incomplete information. Schwab also argues that the proposal may dilute the standard that the primary responsibility for updating and keeping current Form U4 lies with the associated person.[10]

FINRA responded that the proposal merely codifies a member's existing obligation under Article V, Section 2(c) of FINRA's By-Laws that every U4 be kept current, and implicit in this duty is the expectation that the member will seek to ensure that such information is accurate and complete.[11] FINRA noted that the member's obligation is in addition to the associated person's obligation to keep Form U4 current, which is set forth generally in Article V, Section 2 of the FINRA By-Laws.[12]

Proposed FINRA Rule 1010(c)(4)

Schwab supports allowing firms to file amendments to administrative information without obtaining the associated person's signature, but it objects to the requirement that the member firm use reasonable efforts to provide the associated person with a copy of the amended administrative information and believes that this could cause firms to incur significant system changes and costs.[13] FINRA responded that Web CRD is used to help protect investors, and its effectiveness depends on accurate information.[14] Thus, FINRA believes this aspect of the proposal is appropriate in that it encourages members to verify information with an associated person while allowing firms the flexibility to do so after amendments to administrative information have been filed.

Proposed FINRA Rule 1010(c)(1) and (2) and FINRA Rule 2263

Schwab believes that the requirements imposed on a firm, in connection with filing amendments to Form U4 disclosure information without obtaining the associated person's manual signature, and providing the written statement related to arbitration disclosure, may prove costly and complex for firms to implement.[15] Schwab opines that the goal of having clear evidence of the registered person's knowledge and acceptance of disclosure information may be achieved using existing procedures and electronic systems that accomplish certain functions.[16] FINRA stated that this concern can be addressed with interpretive guidance and that it would address it accordingly, assuming approval of the proposal.[17]

IV. Discussion and Commission Findings

After carefully reviewing the proposed rule change, the Schwab Letter, and the Response Letter, the Commission finds that the proposal is consistent with the requirements of the Act and the rules and regulations thereunder applicable to a national securities association.[18] In particular, the Commission finds that the proposal is consistent with Section 15A(b)(6) of the Act,[19] which requires, among other things that FINRA's rules be designed to prevent fraudulent and manipulative acts and practices, to promote just and equitable principles of trade, to remove impediments to and perfect the mechanism of a free and open market and a national market system, and, in general, to protect investors and the public interest.

The Commission believes that the revisions FINRA proposed in connection with moving NASD Rule 1140 and Rule 3080 to the consolidated FINRA Rulebook as new FINRA Rule 1010 and new FINRA Rule 2263 should,

[8] *See* Securities Exchange Act Release No. 41575 (June 29, 1999), 64 FR 36728, 36729 n.7 (July 7, 1999) (Order Approving File No. SR–NASD–99–28); *see also* Securities Exchange Act Release No. 37439 (July 15, 1996), 61 FR 37950 (July 22, 1996) (Order Approving File No. SR–NASD–96–21).

[9] *See* Securities Exchange Act Release No. 59358 (February 4, 2009), 74 FR 6928 (February 11, 2009) (Order Approving File No. SR–FINRA–2008–051).

[10] *See* Schwab Letter at 2–3.

[11] *See* Response Letter at 2.

[12] *Id.* at 2–3.

[13] *See* Schwab Letter at 4.

[14] *See* Response Letter at 4.

[15] *See* Schwab Letter at 4–5.

[16] *Id.*

[17] *See* Response Letter at 4.

[18] In approving this proposed rule change, the Commission has considered the proposed rule's impact on efficiency, competition, and capital formation. *See* 15 U.S.C. 78c(f).

[19] 15 U.S.C. 78*o*–3(b)(6).

among other things, strike a fair balance between providing notice to associated persons of changes to their U4 where obtaining a signature may prove difficult and allowing firms to expeditiously update information. In addition, the Commission believes that it is appropriate for FINRA to make explicit in its rules a member's obligation to ensure that information in Form U4 regarding its associated persons is accurate, even though this requirement is explicit in FINRA's By-Laws. Ensuring that information in Web CRD is current and accurate enhances the usefulness of Web CRD.

The Commission believes that FINRA, in its Response Letter, adequately addressed the comments raised in the Schwab Letter. The Commission emphasizes that FINRA correctly noted that both firms and associated persons have a duty to keep information in Web CRD current, and both are responsible for ensuring that disclosure information is accurate; this proposal merely codifies this obligation. The Commission also agrees with FINRA that firms should try to ensure the accuracy and completeness of information submitted. This purpose should be served by the rule requiring a firm to use reasonable efforts to provide the associated person with a copy of the amended disclosure information post-filing, since the firm should have contact information for the associated person, whom it is responsible for regulating, and the associated person can ensure that the amended information is accurate.

For the reasons discussed above, the Commission finds that the rule change is consistent with the Act and the rules and regulations thereunder.

IV. Conclusion

It is therefore ordered, pursuant to Section 19(b)(2) of the Act,[20] that the proposed rule change (SR–FINRA–2009–019), be, and hereby is, approved.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.[21]

Florence E. Harmon,

Deputy Secretary.

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[20] 15 U.S.C. 78s(b)(2).

[21] 17 CFR 200.30–3(a)(12).

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–60359; File No. SR–MSRB–2009–08]

Self-Regulatory Organizations; Municipal Securities Rulemaking Board; Notice of Filing and Immediate Effectiveness of Proposed Rule Change Relating to Guidance on Disclosure and Other Sales Practice Obligations to Individual and Other Retail Investors in Municipal Securities

July 21, 2009.

Pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 (''Act''),[1] and Rule 19b–4 thereunder,[2] notice is hereby given that on July 14, 2009, the Municipal Securities Rulemaking Board (''MSRB''), filed with the Securities and Exchange Commission (''Commission'') the proposed rule change as described in Items I, II and III below, which Items have been substantially prepared by the MSRB. The MSRB has designated the proposed rule change as constituting a stated policy, practice, or interpretation with respect to the meaning, administration, or enforcement of an existing rule of the self-regulatory organization pursuant to Section 19(b)(3)(A)(i) of the Act,[3] and Rule 19b–4(f)(1) thereunder,[4] which renders the proposal effective upon filing with the Commission. The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

The MSRB has filed with the Commission a proposed rule change consisting of interpretive guidance on disclosure and other sales practice obligations of brokers, dealers and municipal securities dealers (''dealers'') relating to sales of municipal securities to individual and other retail investors. The text of the proposed rule change is available on the MSRB's Web site (*http://www.msrb.org*), at the MSRB's principal office, and at the Commission's Public Reference Room.

II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, the MSRB included statements concerning the purpose of and basis for the proposed rule change and discussed any comments it received on the proposed rule change. The text of these statements may be examined at the places specified in Item IV below. The MSRB has prepared summaries, set forth in Sections A, B, and C below, of the most significant aspects of such statements.

A. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

1. Purpose

The proposed rule change provides guidance to brokers, dealers and municipal securities dealers (''dealers'') of their sales practice obligations under MSRB rules as applied specifically to individual and other retail investors. Among other things, the proposed rule change updates guidance to dealers on (i) their obligations to disclose material information about issuers, their securities and credit/liquidity support for such securities in connection with the fulfillment of their disclosure obligations under MSRB Rule G–17, (ii) their obligations to use such material information in fulfilling their suitability obligations under MSRB Rule G–19, and (iii) their fair pricing obligations under MSRB Rules G–18 and G–30. The proposed rule change also applies previous guidance on bond insurance rating downgrades and wide-scale auction failures for municipal auction rate securities (''ARS''), to municipal securities transactions in general and specifically to transactions with individual and other retail investors in variable rate demand obligations (''VRDOs'').

Disclosure

The proposed rule change makes clear that dealers are responsible under Rule G–17 for disclosing to their customers, at or prior to the time of trade for any municipal securities transaction, all material information about the transaction known by the dealer, as well as material information about the security that is reasonably accessible to the market, including information available from established industry sources. Dealers must provide such disclosures notwithstanding the availability to investors of comprehensive information from the MSRB's Electronic Municipal Market Access system (EMMA) and other established industry sources. Dealers are expected to establish procedures reasonably designed to ensure that information known to the dealer is communicated internally or otherwise

[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b–4.

[3] 15 U.S.C. 78s(b)(3)(A)(i).

[4] 17 CFR 240.19b–4(f)(1).

made available to relevant personnel in a manner reasonably designed to ensure compliance with this disclosure obligation.

The proposed rule change provides that, in general, information is considered ''material'' if there is a substantial likelihood that its disclosure would have been considered important or significant by a reasonable investor. The duty to disclose material information to a customer in a municipal securities transaction includes the duty to give a complete description of the security, including a description of the features that likely would be considered significant by a reasonable investor and facts that are material to assessing the potential risks of the investment. For VRDOs, ARS or other securities for which interest payments may fluctuate, such material facts would include a description of the basis on which periodic interest rate resets are determined.

The proposed rule change provides that the following information will generally be material information required to be disclosed to investors in credit/liquidity enhanced securities, including but not limited to VRDOs, if known to the dealer or if reasonably available from established industry sources: (i) The credit rating of the issue or lack thereof; (ii) the underlying credit rating or lack thereof, (iii) the identity of any credit enhancer or liquidity provider; and (iv) the credit rating of the credit provider and liquidity provider, including potential rating actions (*e.g.,* downgrade). Additionally, material terms of the credit facility or liquidity facility should be disclosed (*e.g.,* any circumstances under which a standby bond purchase agreement (''SBPA'') would terminate without a mandatory tender). If the remarketing agent for a VRDO has customarily or from time-to-time taken tendered bonds into inventory to make it unnecessary to draw on the liquidity facility for unremarketed bonds (thereby in effect providing liquidity support), the fact that the remarketing agent is not contractually obligated to maintain such practice will generally be material information required to be disclosed to customers to which VRDOs are sold. This list is not exhaustive. Other information may also be material to investors in credit/liquidity enhanced securities.

The proposed rule change reminds dealers that they are not relieved of their suitability obligations under MSRB Rule G–19 or their fair pricing obligations to their customers under MSRB Rules G–18 and G–30 simply by disclosing material information to the customer. The information known by a dealer in connection with a municipal security, together with the information available from established industry sources, generally should inform the dealer, to the extent applicable, in undertaking the necessary analyses and determinations needed to meet these other customer protection obligations.

Suitability

Under the proposed rule change, dealers are obligated to make a suitability determination arising under Rule G–19 in connection with a recommended transaction. This requires a meaningful analysis, taking into consideration the information obtained about the investor and the security, which establishes the reasonable grounds for believing that the recommendation is suitable. Such suitability determinations are required regardless of the apparent safety of a particular security or issuer or the apparent wealth or sophistication of a particular investor. Suitability determinations should be based on the appropriately weighted factors that are relevant in any particular set of facts and circumstances, and those factors may vary from transaction to transaction. Factors to be considered include, but are not limited to, the investor's financial profile, tax status, investment objectives (including portfolio concentration/diversification), and the specific characteristics and risks of the municipal security recommended to the investor.

In the proposed rule change, the MSRB notes that Section (c) of Exchange Act Rule 15c2–12 provides that it is impermissible for a dealer to recommend the purchase or sale of a municipal security unless the dealer has procedures in place that provide reasonable assurance that it will receive prompt notice of the specified material events that are subject to the continuing disclosure obligations of the rule. A dealer would be expected to have reviewed any applicable continuing disclosures made available through EMMA or other established industry sources and to have taken such disclosures into account in undertaking its suitability determination.

The proposed rule change provides guidance specifically with regard to credit-enhanced securities. Facts relating to the credit rating of the credit enhancer may affect suitability determinations, particularly for investors who have conveyed to the dealer investment objectives relating to credit quality of investments. In the case of recommended VRDOs or any other securities that are viewed as providing significant liquidity to investors, a dealer must consider both the liquidity characteristics of the security and the investor's need for a liquid investment when making a suitability determination. Facts relating to the short-term credit rating, if any, of a letter of credit or SBPA provider, or of any other third-party liquidity facility provider, generally would affect suitability determinations in such securities. To the extent that an investor seeks to invest in VRDOs due to their liquidity characteristics, a suitability analysis also generally would require a dealer, in recommending a VRDO to an individual investor, to consider carefully the circumstances, if any, under which the liquidity feature may no longer be effectively available to the customer.

With respect to new products introduced into the municipal securities market, the proposed rule change reminds dealers that they must review the relevant disclosure documents to become familiar with the specific characteristics of the product, including the tax features, prior to recommending such products to their customers.

Pricing

The proposed rule change provides that, as a general matter, in addition to information about prices of transactions effected by dealers and other market participants in a particular municipal security, material information about a security available through EMMA or other established industry sources may also be among the relevant factors that the dealer should consider in connection with ensuring fair pricing of its transactions with investors. Among other things, dealers would be expected to have reviewed any applicable continuing disclosures made available through EMMA or other established industry sources and to have taken such disclosures into account in determining a fair and reasonable transaction price. In addition, dealers should consider the effect of ratings on the value of the securities involved in customer transactions, and should specifically consider the effect of information from rating agencies, both with respect to actual or potential changes in the underlying rating of a security and with respect to actual or potential changes in the rating of any third-party credit enhancement applicable to the security.

Dealers are reminded that an issuer's use of a retail order period based on a perception that the retail order period will improve pricing of the new issue for the issuer does not create a safe harbor for dealers to engage in pricing that violates the fair pricing obligation

under Rule G–30. Large differences between institutional and individual prices that exceed the price/yield variance that normally applies to transactions of different sizes in the primary market provide evidence that the duty of fair pricing to individual clients may not have been met.

2. Statutory Basis

The MSRB has adopted the proposed rule change pursuant to Section 15B(b)(2)(C) of the Act,[5] which provides that the MSRB's rules shall:

> Be designed to prevent fraudulent and manipulative acts and practices, to promote just and equitable principles of trade, to foster cooperation and coordination with persons engaged in regulating, clearing, settling, processing information with respect to, and facilitating transactions in municipal securities, to remove impediments to and perfect the mechanism of a free and open market in municipal securities, and, in general, to protect investors and the public interest.

The MSRB believes that the proposed rule change is consistent with the Act because it will further investor protection by strengthening and clarifying dealers' customer protection obligations relating to sales of municipal securities to individual and other retail customers, including but not limited to the duty to provide material information to customers investing in municipal securities and to use material information in fulfilling their suitability obligations and their fair pricing obligations.

B. Self-Regulatory Organization's Statement on Burden on Competition

The MSRB does not believe that the proposed rule change will impose any burden on competition that is not necessary or appropriate in furtherance of the purposes of the Act, as amended, since it would apply equally to all dealers.

C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received From Members, Participants or Others

Written comments were neither solicited nor received on the proposed rule change.

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

The proposed rule change has become effective pursuant to Section 19(b)(3)(A)(i) of the Act[6] and Rule 19b–4(f)(1) thereunder,[7] in that the proposed rule change constitutes a stated policy, practice, or interpretation with respect to the meaning, administration, or enforcement of an existing rule of the self-regulatory organization. At any time within 60 days of the filing of the proposed rule change, the Commission may summarily abrogate such rule change if it appears to the Commission that such action is necessary or appropriate in the public interest, for the protection of investors, or otherwise in furtherance of the purposes of the Act.[8]

IV. Solicitation of Comments

Interested persons are invited to submit written data, views, and arguments concerning the foregoing, including whether the proposed rule change is consistent with the Act. Comments may be submitted by any of the following methods:

Electronic Comments

- Use the Commission's Internet comment form (*http://www.sec.gov/rules/sro.shtml);* or
- Send an e-mail to *rule-comments@sec.gov*. Please include File Number SR–MSRB–2009–08 on the subject line.

Paper Comments

- Send paper comments in triplicate to Elizabeth M. Murphy, Secretary, Securities and Exchange Commission, 100 F Street, NE., Washington, DC 20549–1090.

All submissions should refer to File Number SR–MSRB–2009–08. This file number should be included on the subject line if e-mail is used. To help the Commission process and review your comments more efficiently, please use only one method. The Commission will post all comments on the Commission's Internet Web site (*http://www.sec.gov/rules/sro.shtml).* Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for inspection and copying in the Commission's Public Reference Room, 100 F Street, NE., Washington, DC 20549, on official business days between the hours of 10 a.m. and 3 p.m. Copies of such filing also will be available for inspection and copying at the principal office of the MSRB. All comments received will be posted without change; the Commission does not edit personal identifying information from submissions. You should submit only information that you wish to make available publicly. All submissions should refer to File Number SR–MSRB–2009–08 and should be submitted on or before August 17, 2009.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.[9]

Florence E. Harmon,

Deputy Secretary.

[FR Doc. E9–17820 Filed 7–24–09; 8:45 am]

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[5] 15 U.S.C. 78o–4(b)(2)(C).

[6] 15 U.S.C. 78s(b)(3)(A)(i).

[7] 17 CFR 240.19b–4(f)(1).

[8] *See* Section 19(b)(3)(C) of the Act, 15 U.S.C. 78s(b)(3)(C).

[9] 17 CFR 200.30–3(a)(12).

SOCIAL SECURITY ADMINISTRATION

Agency Information Collection Activities: Proposed Request and Comment Request

The Social Security Administration (SSA) publishes a list of information collection packages requiring clearance by the Office of Management and Budget (OMB) in compliance with Public Law (Pub. L.) 104–13, the Paperwork Reduction Act of 1995, effective October 1, 1995. This notice includes revisions and extensions of OMB-approved information collections and a new collection.

SSA is soliciting comments on the accuracy of the agency's burden estimate; the need for the information; its practical utility; ways to enhance its quality, utility, and clarity; and ways to minimize the burden on respondents, including the use of automated collection techniques or other forms of information technology. Mail, email, or fax your comments and recommendations on the information collection(s) to the OMB Desk Officer and the SSA Director for Reports Clearance to the addresses or fax numbers shown below.

(OMB), Office of Management and Budget, Attn: Desk Officer for SSA, Fax: 202–395–6974, E-mail address: *OIRA_Submission@omb.eop.gov.*

(SSA), Social Security Administration, DCBFM, Attn: Director, Center for Reports Clearance, 1333 Annex Building, 6401 Security Blvd., Baltimore, MD 21235, Fax: 410–965–0454. E-mail address: *OPLM.RCO@ssa.gov*

I. The information collection below is pending at SSA. SSA will submit it to

OMB within 60 days from the date of this notice. To be sure we consider your comments, we must receive them no later than September 25, 2009. Individuals can obtain copies of the collection instrument by calling the SSA Director for Reports Clearance at 410–965–0454 or by writing to the e-mail address we list above.

1. Waiver of Right to Appear—Disability Hearing—20 CFR 404.913–404.914, 404.916(b)(5), 416.1413–416.1414, 416.1416(b)(5)—0960–0534. SSA uses Form SSA–773–U4 for claimants, or their representatives, to officially waive their right to appear at a disability hearing. The disability hearing officer uses the signed form as a basis for not holding a hearing and for preparing a written decision on the claimant's request for disability based solely on the evidence of record. The respondents are claimants for disability, or their representatives, under Titles II and XVI of the Social Security Act, who wish to waive their right to appear at a disability hearing.

Type of Request: Extension of an OMB-approved information collection.

Number of Respondents: 200.

Frequency of Response: 1.

Average Burden per Response: 3 minutes.

Estimated Annual Burden: 10 hours.

2. Medical Consultant's Review of Physical Residual Functional Capacity Assessment—20 CFR 404.1545–.1546, 404.1640, 404.1643, 404.1645, 416.945–.946—0960–0680. SSA uses Form SSA–392 to facilitate the medical/psychological consultant's review of the Physical Residual Functional Capacity Form, SSA–4734. The SSA–392 records the reviewing medical/psychological consultant's assessment of the SSA–4734. It also documents whether the reviewer agrees or disagrees with how the adjudicator completed the SSA–4734. Medical/psychological consultants prepare the SSA–392 for each SSA–4734 an adjudicator completes. The respondents are medical/psychological consultants who conduct a quality review of adjudicating components' completion of SSA's medical assessment forms.

Type of Request: Extension of an OMB-approved information collection.

Number of Respondents: 256.

Frequency of Response: 359.

Number of Responses: 91,904

Average Burden per Response: 12 minutes.

Estimated Annual Burden: 18,381 hours.

II. SSA has submitted the information collections we list below to OMB for clearance. Your comments on the information collections would be most useful if OMB and SSA receive them within 30 days from the date of this publication. To be sure we consider your comments, we must receive them no later than August 26, 2009. You can obtain a copy of the OMB clearance packages by calling the SSA Director for Reports Clearance at 410–965–0454 or by writing to the above email address.

1. Request for Reconsideration—Disability Cessation—20 CFR 404.909, 416.1409—0960–0349. Claimants or their representatives use Form SSA–789–U4 to request that SSA reconsider a determination and to indicate whether they wish to appear at a disability hearing. The claimants can also use this form to submit any additional information/evidence for use in the reconsidered determination and to indicate if they will need an interpreter for the hearing. SSA uses the information either to arrange for a hearing or to prepare a decision based on the evidence of record. The respondents are applicants or claimants for Social Security benefits or Supplemental Security Income (SSI) payments.

Type of Request: Extension of an OMB-approved information collection.

Number of Respondents: 30,000.

Frequency of Response: 1.

Average Burden per Response: 13 minutes.

Estimated Annual Burden: 6,500 hours.

2. Disability Report—Adult—20 CFR 404.1512, 416.912—0960–0579. State Disability Determination Services (DDS) use the information SSA collects on the SSA–3368 and its electronic versions to determine if an adult disability applicant's impairment(s) is (are) severe and, if so, how the impairment(s) affects (affect) the applicant's ability to work. The information the DDSs collect on this form is crucial in making disability determinations for all adult claimants filing for SSA disability benefits and/or SSI payments. The respondents are applicants for Title II benefits and/or Title XVI payments. Type of Request: Revision of an OMB-approved information collection.

Collection method	Number of respondents	Frequency of response	Average burden per response (hours)	Estimated annual burden (hours)
SSA–3368 (Paper Form)	22,950	1	1	22,950
Electronic Disability Collection System (EDCS)	2,238,826	1	1	2,238,826
i3368 (Internet)	319,994	1	1½	479,991
i3368PRO (Internet professional users—rollout only)	10,264	1	1½	15,396
Total	2,592,034			2,757,163

3. Request for Internet Services—Password Authentication—20 CFR 401.45—0960–0632. SSA has a password infrastructure and process to verify the identity of individuals who choose to use the Internet and the automated telephone response system to conduct personal business with SSA in an electronic environment. To obtain a password from SSA's individual password services, we prescribe information an individual must provide. SSA uses the information to authenticate an individual prior to issuing a temporary password. Once the individual creates a permanent password, he or she may use SSA password protected services, e.g., account status, change of address, direct deposit elections, or changes. The respondents are individuals electing to do personal business with SSA through an electronic medium.

Type of Request: Extension of an OMB-approved information collection.

Automated systems	Number of respondents	Frequency of response	Average burden per response (minutes)	Annual burden hours
Internet Requestors	3,092,069	1	10	515,345
Telephone Requestors	122,266	1	10	20,378
Total	3,214,335	1	.....	535,723

4. Function Report Adult—Third Party—20 CFR 404.1512 & 416.912—0960–0635. DDSs use the SSA–3380 to collect information about a disability applicant's or recipient's impairment-related limitations and ability to function. The information is an evidentiary source DDS evaluators use to determine eligibility for SSI and SSDI claims. The respondents are third parties familiar with the functional limitations (or lack thereof) of claimants who apply for SSI and SSDI benefits.

Type of Request: Revision of an OMB-approved information collection.

Respondent types	Number of respondents	Frequency of response	Average burden per response (minutes)	Estimated annual burden hours
Individuals	500,000	1	61	508,333
Private Sector	500,000	1	61	508,333
Total	1,000,000	.....	.....	1,016,666

5. Medical Consultant's Review of Mental Residual Functional Capacity Assessment—20 CFR 404.1520a, 404.1640, 404.1643, 404.1645, 416.920a—0960–0678. SSA uses Form SSA–392–SUP to facilitate the medical/psychological consultant's review of the Mental Residual Functional Capacity Form, SSA–4734–SUP. The SSA–392–SUP records the reviewing medical/psychological consultant's assessment of the SSA–4734–SUP. It also documents whether the reviewer agrees or disagrees with how the adjudicator completed the SSA–4734–SUP. Medical/psychological consultants prepare the SSA–392–SUP for each SSA–4734–SUP an adjudicator completes. The respondents are medical/psychological consultants who conduct a quality review of adjudicating components' completion of SSA's medical assessment forms.

Type of Request: Revision of an OMB-approved information collection.

Number of Responses: 45,000.

Frequency of Response: 1.

Average Burden per Response: 12 minutes.

Estimated Annual Burden: 9,000 hours.

6. Representative Payment Policies Regulation—20 CFR 404.2011, 404.2025, 416.611, 416.625—0960–0679. When SSA determines it is not in a beneficiary's best interest to receive payments directly, as it may cause substantial harm, the beneficiary may dispute SSA's decision. If the beneficiary disputes the decision, he or she provides SSA with information the agency will use to re-evaluate the decision. In addition, after SSA selects a representative payee, the payee must provide SSA with information on his or her continuing relationship and responsibility for the beneficiary and explain how he or she used the beneficiary's payments. Respondents are beneficiaries and representative payees.

Type of Request: Extension of an OMB-approved information collection.

CFR section	Number of respondents	Frequency of response	Average burden per response (minutes)	Estimated annual burden hours
404.2011(a)(1), 416.611(a)(1)	250	1	15	63
404.2025, 416.625	3,000	1	6	300
Total	3,250	.....	.....	363

7. Function Report Adult—20 CFR 404.1512 & 416.912—0960–0681. State DDSs use Form SSA–3373–BK to collect information about a disability applicant's or recipient's impairment-related limitations and ability to function. The information is an evidentiary source DDS evaluators use to determine eligibility for SSI and SSDI claims. The respondents are Title II and Title XVI applicants (or current recipients undergoing redeterminations) for disability benefits.

Type of Request: Revision of an OMB-approved information collection.

Number of Respondents: 4,005,367.

Frequency of Response: 1.

Average Burden per Response: 61 minutes.

Estimated Annual Burden: 4,072,123 hours.

Dated: July 21, 2009.

Elizabeth A. Davidson,

Director, Center for Reports Clearance, Social Security Administration.

[FR Doc. E9–17805 Filed 7–24–09; 8:45 am]

BILLING CODE 4191–02–P

OFFICE OF THE UNITED STATES TRADE REPRESENTATIVE

Request for Comments Concerning Free Trade Agreement With the Republic of Korea

AGENCY: Office of the United States Trade Representative.

ACTION: Notice and request for comments.

SUMMARY: The United States Trade Representative (USTR) is assessing how and to what extent the free trade agreement (FTA) between the United States and the Republic of Korea (Korea) signed on June 30, 2007 makes progress in achieving the applicable purposes, policies, priorities, and objectives of the Bipartisan Trade Promotion Authority Act of 2002 (''TPA Act'') (19 U.S.C. 3801 note) as set out in section 2102 of the TPA Act and carries out the provisions of the May 10, 2007 Congressional–Executive Agreement on Trade Policy, *http://www.ustr.gov/sites/default/files/uploads/factsheets/2007/asset_upload_file127_11319.pdf* (''May 10 Agreement''). The FTA has not yet entered into effect. The interagency Trade Policy Staff Committee (TPSC) seeks public comment to assist the USTR in its assessment.

DATES: Written comments are due by noon, September 15, 2009.

ADDRESSES: Comments should be submitted electronically via the Internet at *http://www.regulations.gov.* For alternatives to on-line submissions please contact Gloria Blue, Executive Secretary, Trade Policy Staff Committee, at (202) 395–3475.

FOR FURTHER INFORMATION CONTACT: For procedural questions concerning written comments, contact Gloria Blue, Executive Secretary, Trade Policy Staff Committee, at (202) 395–3475. All other questions should be directed to Bryant Trick, Deputy Assistant U.S. Trade Representative for Korea, at (202) 395–5070.

SUPPLEMENTARY INFORMATION:

On February 2, 2006, after consulting with relevant Congressional committees and the Congressional Oversight Group, the USTR notified Congress of the President's intent to initiate free trade agreement negotiations with Korea, identified specific objectives for the negotiations, and solicited comment from interested persons on matters relevant to the FTA. 71 FR 6820. On April 1, 2007, the President notified Congress of his intent to enter into an FTA with Korea and representatives of the two governments signed the FTA on June 30, 2007. The full text of the FTA is available at *http://www.ustr.gov/trade-agreements/free-trade-agreements/korus-fta/final-text.*

To assist the USTR in assessing how and to what extent the FTA makes progress in achieving the applicable purposes, policies, priorities, and objectives of the TPA Act as set out in Section 2102 of the TPA Act, and carries out the provisions of the May 10 Agreement, the Chairman of the TPSC invites interested persons to provide written comments on any provision or aspect of the FTA or any other matter relevant to the FTA. In particular, the TPSC seeks comments regarding:

(1) How implementation of the FTA will affect trade between Korea and the United States, in general and with respect to particular goods or services;

(2) Economic costs and benefits to U.S. workers, farmers, ranchers, businesses and consumers of removal of tariffs and non-tariff barriers affecting trade between the United States and Korea; and

(3) Any additional steps that one or both governments should take to address specific concerns regarding the FTA and the bilateral trade and investment relationship.

Interested persons may submit written comments by noon, September 15, 2009 (see requirements for submission below). Written comments should be submitted in English and must state clearly the position taken and describe with particularity the supporting rationale. Comments addressing specific aspects of the FTA should include references to relevant provisions of the signed text whenever possible (see above for a link to the FTA text). The first page of written comments must specify the subject matter, including, as applicable, the product(s) (with HTSUS numbers), service sector(s), or other subjects (such as investment, intellectual property, and/or government procurement).

Public Comment: Requirements for Submissions

To ensure the most timely and expeditious receipt and consideration of comments, USTR has arranged to accept on-line submissions via *http://www.regulations.gov.* To submit comments via *http://www.regulations.gov*, enter docket number USTR–2009–0020 on the home page and click ''go''. The site will provide a search-results page listing all documents associated with this docket. Find a reference to this notice by selecting ''Notice'' under ''Document Type'' on the left side of the search-results page, and click on the link entitled ''Send a Comment or Submission.'' (For further information on using the *http://www.regulations.gov* Web site, please consult the resources provided on the Web site by clicking on ''How to Use This Site'' on the left side of the home page.)

The *http://www.regulations.gov* Web site provides the option of making submissions by filling in a ''General Comments'' field, or by attaching a document. We expect that most submissions will be provided in an attached document. If a document is attached, it is sufficient to type ''See attached'' in the ''General Comments'' field.

Submissions in Microsoft Word (.doc) or Adobe Acrobat (.pdf) are preferred. If you use an application other than those two, please identify the application in your submission. For any comments submitted electronically containing business confidential information, the file name of the business confidential version should begin with the characters ''BC''. Any page containing business confidential information must be clearly marked ''BUSINESS CONFIDENTIAL'' on the top of that page. If you file comments containing business confidential information you must also submit a public version of the comments. The file name of the public version should begin with the character ''P''. The ''BC'' and ''P'' should be followed by the name of the person or entity submitting the comments. If you submit comments that contain no business confidential information, the file name should begin with the character ''P'', followed by the name of the person or entity submitting the comments. Electronic submissions should not attach separate cover letters; rather, information that might appear in a cover letter should be included in the comments you submit. Similarly, to the extent possible, please include any exhibits, annexes, or other attachments to a submission in the same file as the submission itself and not as separate files.

We strongly urge submitters to use electronic filing. If an on-line submission is impossible, alternative arrangements must be made with Ms. Blue prior to delivery for the receipt of such submissions. Ms. Blue may be contacted at (202) 395–3475. General information concerning the Office of the United States Trade Representative may be obtained by accessing its Internet Web site (*http://www.ustr.gov*).

Carmen Suro-Bredie,

Chairman, Trade Policy Staff Committee.

[FR Doc. E9–17800 Filed 7–24–09; 8:45 am]

BILLING CODE 3190–W9–P

DEPARTMENT OF TRANSPORTATION

Office of the Secretary

[Docket No. DOT–OST–2008–0388]

Revision of a Previously Approved Collection: Public Charters, 14 CFR Part 380

AGENCY: Office of the Secretary, Department of Transportation.

ACTION: Notice.

SUMMARY: In accordance with the Paperwork Reduction Act of 1995, Public Law 104–13, (44 U.S.C. 3501 *et seq.*), this notice announces that the Information Collection Request (ICR), abstracted below, is being forwarded to the Office of Management and Budget (OMB) for renewal of currently approved Public Charters, 14 CFR part 380. Earlier, a **Federal Register** Notice with a 60-day comment period was published on May 21, 2009 (74 FR 23925). The agency did not receive any comments to its notice.

DATES: Written comments should be submitted by August 26, 2009.

FOR FURTHER INFORMATION CONTACT: Ms. Reather Flemmings (202–366–1865) and Ms. Torlanda Archer (202–366–1037), U.S. Department of Transportation, Office of the Secretary, Office of International Aviation, Special Authorities Division, X–46, 1200 New Jersey Avenue, SE., W86–445, Washington, DC 20590.

Comment: Comments should be sent to OMB at the address that appears below and should identify the associated OMB Approval Number 2106–0005 and Docket No. DOT–OST–2008–0388.

SUPPLEMENTARY INFORMATION:

OMB Control Number: 2106–0005.

Title: Public Charters, 14 CFR part 380.

Form Numbers: 4532, 4533, 4534, 4535.

Type of Review: Revision of a currently approved collection: The current OMB inventory has decreased the changes are listed below.

Respondents: Private Sector: Air carriers; tour operators; the general public (including groups and individuals, corporations and Universities or Colleges, etc.)

Number of Respondents: 245.

Number of Responses: 1,782.

Total Annual Burden: 891.

Needs and Uses: 14 CFR part 380 establishes the regulations of the Department's terms and conditions governing Public Charter operators to conduct air transportation using direct air carriers. Public Charter operators arrange transportation for groups of people on chartered aircraft. This arrangement is less expensive for the travelers than individually buying a ticket. Part 380 exempts charter operators from certain provisions of the U.S. code in order that they may provide this service. A primary goal of part 380 is to seek protection for the consumer. Accordingly, the rule stipulates that the charter operator must file evidence (a prospectus—consisting of OST Forms 4532, 4533, 4534 and 4535) with the Department for each charter program certifying that it has entered into a binding contract with a direct air carrier to provide air transportation and that it has also entered into agreements with Department-approved financial institutions for the protection of charter participants' funds. The prospectus must be approved by the Department prior to the operator's advertising, selling or operating the charter. If the prospectus information were not collected it would be extremely difficult to assure compliance with agency rules and to assure that public security and other consumer protection requirements were in place for the traveling public. The information collected is available for public inspection (unless the respondent specifically requests confidential treatment). Part 380 does not provide any assurances of confidentiality.

Issued in Washington, DC, on July 21, 2009.

Patricia Lawton,

DOT Paperwork Reduction Act Clearance Officer, Office of the Chief Information Officer.

[FR Doc. E9–17792 Filed 7–24–09; 8:45 am]

BILLING CODE 4910–9X–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

Notice of Cancellation of Environmental Impact Statement for the West Bend Municipal Airport, West Bend, WI

AGENCY: Federal Aviation Administration, DOT.

ACTION: Cancellation of Environmental Impact Statement Process.

SUMMARY: The Federal Aviation Administration (FAA) announces that is has discontinued the preparation of an Environmental Impact Statement (EIS) for proposed development at West Bend Municipal Airport, West Bend, Wisconsin. The FAA is doing so because the current proposed development is not ripe for decision at this time and lacks proper support and justification in the near-term planning period.

On September 6, 2006, the FAA–Great Lakes Region, published in the **Federal Register** a Notice of Intent to prepare an EIS and conduct scoping meetings (Volume 71, Number 172, FR 52608–52609). The EIS and Scoping Meetings addressed proposed construction of a new 5,500 foot x 100 foot Runway 7/25 with full instrument landing system and associated navigational aids at the airport.

Other proposed development included: Construction of a full parallel taxiway for Runway 7/25, hangar area development, land acquisition, widening and rerouting of Highway 33 around the north side of the airport between North Trenton Road and 4,000 feet east of North Oak Road. Two government agency scoping meetings were held on October 11, and October 19, 2006. The public scoping meeting was held October 11, 2006.

The FAA has made little forward progress in the EIS process due to various external constraints and obstacles associated with this airport and proposed development. The major issues surrounding this proposed development are: Lack of justification to support the purpose of and need for proposed project; many acres of high quality wetland impacts; airport (airfield) and physical (natural feature) site constraints; Federal and State Resource Agency opposition; and economic downturn in aircraft demand, operations and loss of based aircraft. As such, the FAA is hereby canceling the EIS process.

Point of Contact: Mr. Dan Millenacker, Environmental Protection Specialist, FAA–Minneapolis Airports District Office, 6020 28th Avenue South, Room 102, Minneapolis, Minnesota 55450–2706, (612) 713–4359.

Issued in Minneapolis, Minnesota, July 15, 2009.

Jesse Carriger,

Manager, Minneapolis Airport District Office, FAA, Great Lakes Region.

[FR Doc. E9–17866 Filed 7–24–09; 8:45 am]

BILLING CODE 4910–13–P

DEPARTMENT OF TRANSPORTATION

Federal Highway Administration

Notice of Final Federal Agency Actions on State Highway 99 (Segment E) in Texas

AGENCY: Federal Highway Administration (FHWA), DOT.

ACTION: Notice of limitation on claims for judicial review of actions by FHWA and other federal agencies.

SUMMARY: This notice announces actions taken by the FHWA and other Federal agencies that are final within the meaning of 23 U.S.C. 139(l)(1). The actions relate to a proposed highway project, Grand Parkway (State Highway 99) Segment E, from Interstate Highway 10 (I–10) to United States Highway 290 (U.S. 290) in Harris County, Texas. Those actions grant licenses, permits, and approvals for the project.

DATES: By this notice, the FHWA is advising the public of final agency actions subject to 23 U.S.C. 139(l)(1). A claim seeking judicial review of the Federal agency actions on the highway project will be barred unless the claim is filed on or before January 25, 2010. If the Federal law that authorizes judicial review of a claim provides a time period of less than 180 days for filing such claim, then that shorter time period still applies.

FOR FURTHER INFORMATION CONTACT: Mr. Gregory Punske, P.E., District Engineer, District B (South), Federal Highway Administration, 300 East 8th Street, Room 826, Austin, Texas 78701; telephone: (512) 536–5960; e-mail: *gregory.punske@fhwa.dot.gov.* The FHWA Texas Division Office's normal business hours are 7:45 a.m. to 4:15 p.m. (central time) Monday through Friday. You may also contact Dianna Noble, P.E., Environmental Affairs Division, Texas Department of Transportation, 118 E. Riverside Drive, Austin, Texas 78704; telephone: (512) 416–2734; e-mail: *dnoble@dot.state.tx.us.* The Texas Department of Transportation normal business hours are 8 a.m. to 5 p.m. (central time) Monday through Friday.

SUPPLEMENTARY INFORMATION: Notice is hereby given that the FHWA and other Federal agencies have taken final agency actions by issuing licenses, permits, and approvals for the following highway project in the State of Texas: Grand Parkway (State Highway 99) Segment E from I–10 to U.S. 290 in Harris County; FHWA Project Reference Number: FHWA–TX–EIS–02–01–F. The project will be a 22.4 km (13.9 mi) long, four-lane controlled access toll road with intermittent frontage roads, grade-separated intersections with exit and entrance ramps at eight intersecting roadways, and elevated directional interchanges at State Highway 99 and U.S. 290. It will begin in western Harris County at Franz Road near I–10. It will then proceed north through Harris County and end at U.S. 290. The purpose of the project is to efficiently link the suburban communities and major roadways, enhance mobility and safety, and respond to economic growth. The actions by the Federal agencies, and the laws under which such actions were taken, are described in the Final Environmental Impact Statement (FEIS) for the project, approved on November 19, 2007, in the FHWA Record of Decision (ROD) issued on June 24, 2008, in the FHWA Revised ROD issued on June 9, 2009, and in other documents in the FHWA administrative record. The FEIS, ROD, Revised ROD, and other documents in the FHWA administrative record file are available by contacting the FHWA or the Texas Department of Transportation at the addresses provided above. The FHWA FEIS and ROD can be viewed and downloaded from the Grand Parkway Association Web site at *http://www.grandpky.com/segments/e/.*

This notice applies to all Federal agency decisions as of the issuance date of this notice and all laws under which such actions were taken, including but not limited to:

1. *General:* National Environmental Policy Act (NEPA) [42 USC 4321–4335]; Federal-Aid Highway Act [23 U.S.C. 109].

2. *Air:* Clean Air Act, 42 U.S.C. 7401–7671(q).

3. *Land:* Section 4(f) of the Department of Transportation Act of 1966 [49 U.S.C. 303].

4. Wildlife: Endangered Species Act [16 U.S.C. 1531–1544] Fish and Wildlife Coordination Act [16 U.S.C. 661–667(d)], Migratory Bird Treaty Act [16 U.S.C. 703–712].

5. *Historic and Cultural Resources:* Section 106 of the National Historic Preservation Act of 1966, as amended [16 U.S.C. 470(f) *et seq.*]; Archeological Resources Protection Act of 1977 [16 U.S.C. 470(aa)–(ll)]; Archeological and Historic Preservation Act [16 U.S.C. 469–469(c)].

6. *Social and Economic:* Civil Rights Act of 1964 [42 U.S.C. 2000(d)–2000(d)(1)]; Farmland Protection Policy Act (FPPA) [7 U.S.C. 4201–4209].

7. *Wetlands and Water Resources:* Clean Water Act, 33 U.S.C. 1251–1342; Land and Water Conservation Fund (LWCF), 16 U.S.C. 4601–4604.

8. *Executive Orders:* E.O. 11990 Protection of Wetlands; E.O. 11988 Floodplain Management; E.O. 12898, Federal Actions to Address Environmental Justice in Minority Populations and Low Income Populations; E.O. 11514 Protection and Enhancement of Environmental Quality.

(Catalog of Federal Domestic Assistance Program Number 20.205, Highway Planning and Construction. The regulations implementing Executive Order 12372 regarding intergovernmental consultation on Federal programs and activities apply to this program.)

Authority: 23 U.S.C. 139(l)(1).

Issued on: July 21, 2009.

Gregory S. Punske,

District Engineer, Austin.

[FR Doc. E9–17779 Filed 7–24–09; 8:45 am]

BILLING CODE 4910–RY–P

DEPARTMENT OF TRANSPORTATION

Federal Highway Administration

Notice of Final Federal Agency Actions on State Highway 99 (Segment F–1) in Texas

AGENCY: Federal Highway Administration (FHWA), DOT.

ACTION: Notice of limitation on claims for judicial review of actions by FHWA and other federal agencies.

SUMMARY: This notice announces actions taken by the FHWA and other Federal agencies that are final within the meaning of 23 U.S.C. 139(l)(1). The actions relate to a proposed highway project, Grand Parkway (State Highway 99) Segment F–1, from United States Highway 290 (U.S. 290) to State Highway 249 (S.H. 249) in Harris County, Texas. Those actions grant licenses, permits, and approvals for the project.

DATES: By this notice, the FHWA is advising the public of final agency actions subject to 23 U.S.C. 139(l)(1). A claim seeking judicial review of the Federal agency actions on the highway project will be barred unless the claim is filed on or before January 25, 2010. If the Federal law that authorizes judicial review of a claim provides a time period of less than 180 days for filing such claim, then that shorter time period still applies.

FOR FURTHER INFORMATION CONTACT: Mr. Gregory Punske, P.E., District Engineer, District B (South), Federal Highway Administration, 300 East 8th Street, Room 826, Austin, Texas 78701; telephone: (512) 536–5960; e-mail: *gregory.punske@fhwa.dot.gov.* The FHWA Texas Division Office's normal business hours are 7:45 a.m. to 4:15 p.m. (Central time) Monday through Friday. You may also contact Dianna Noble, P.E., Texas Department of Transportation, Environmental Affairs Division, 118 E. Riverside Drive, Austin, Texas 78704; telephone: (512) 416–2734; e-mail: *dnoble@dot.state.tx.us.* The Texas Department of Transportation's normal business hours

are 8 a.m. to 5 p.m. (Central time) Monday through Friday.

SUPPLEMENTARY INFORMATION: Notice is hereby given that the FHWA and other Federal agencies have taken final agency actions by issuing licenses, permits, and approvals for the following highway project in the State of Texas: Grand Parkway (State Highway 99) Segment F–1 from U.S. 290 to S.H. 249 in Harris County; FHWA Project Reference Number: FHWA–TX–EIS–03–01–F. The project will be a 19.3 km (12.0 mi) long, four-lane controlled access toll road with intermittent frontage roads, grade-separated intersections with exit and entrance ramps at four intersecting roadways, and elevated directional interchanges at State Highway 99 and U.S. 290 and State Highway 99 and U.S. 249. It will begin in northwestern Harris County at U.S. 290. It will then proceed north then west through Harris County and end at U.S. 249. The purpose of the project is to efficiently link the suburban communities and major roadways, enhance mobility and safety, and respond to economic growth. The actions by the Federal agencies, and the laws under which such actions were taken, are described in the Final Environmental Impact Statement (FEIS) for the project, approved on April 18, 2008, in the FHWA Record of Decision (ROD) issued on November 20, 2008, the FHWA Revised ROD issued on June 12, 2009, and in other documents in the FHWA administrative record. The FEIS, ROD, Revised ROD, and other documents in the FHWA administrative record file are available by contacting the FHWA or the Texas Department of Transportation at the addresses provided above. The FHWA FEIS and ROD can be viewed and downloaded from the Grand Parkway Association Web site at *http://www.grandpky.com/segments/f-1/.*

This notice applies to all Federal agency decisions as of the issuance date of this notice and all laws under which such actions were taken, including but not limited to:

1. General: National Environmental Policy Act (NEPA) [42 U.S.C. 4321–4335]; Federal-Aid Highway Act [23 U.S.C. 109].

2. Air: Clean Air Act, 42 U.S.C. 7401–7671(q).

3. Land: Section 4(f) of the Department of Transportation Act of 1966 [49 U.S.C. 303].

4. Wildlife: Endangered Species Act [16 U.S.C. 1531–1544] Fish and Wildlife Coordination Act [16 U.S.C. 661–667(d)], Migratory Bird Treaty Act [16 U.S.C. 703–712].

5. Historic and Cultural Resources: Section 106 of the National Historic Preservation Act of 1966, as amended [16 U.S.C. 470(f) *et seq.*]; Archeological Resources Protection Act of 1977 [16 U.S.C. 470(aa)–(11)]; Archeological and Historic Preservation Act [16 U.S.C. 469–469(c)].

6. Social and Economic: Civil Rights Act of 1964 [42 U.S.C. 2000(d)–2000(d)(1)]; Farmland Protection Policy Act (FPPA) [7 U.S.C. 4201–4209].

7. Wetlands and Water Resources: Clean Water Act, 33 U.S.C. 1251–1342; Land and Water Conservation Fund (LWCF), 16 U.S.C. 4601–4604.

8. Executive Orders: E.O. 11990 Protection of Wetlands; E.O. 11988 Floodplain Management; E.O. 12898, Federal Actions to Address Environmental Justice in Minority Populations and Low Income Populations; E.O. 11514 Protection and Enhancement of Environmental Quality.

(Catalog of Federal Domestic Assistance Program Number 20.205, Highway Planning and Construction. The regulations implementing Executive Order 12372 regarding intergovernmental consultation on Federal programs and activities apply to this program.)

Authority: 23 U.S.C. 139(l)(1).

Issued on: July 21, 2009.

Gregory S. Punske,

District Engineer, Austin.

[FR Doc. E9–17777 Filed 7–24–09; 8:45 am]

BILLING CODE 4910–RY–P

DEPARTMENT OF TRANSPORTATION

National Highway Traffic Safety Administration

Privacy Act of 1974; System of Records Notice

AGENCY: National Highway Traffic Safety Administration (NHTSA), Department of Transportation (DOT).

ACTION: Notice to establish a system of records.

SUMMARY: NHTSA intends to establish a system of records under the Privacy Act of 1974 as part of its Consumer Assistance to Recycle and Save program (CARS program), which implements the Consumer Assistance to Recycle and Save Act of 2009 (CARS Act). The system of records will contain personally identifiable information (PII) about individual car purchasers/lessees and may contain PII about a limited number of sole proprietor automobile salvage auctions and disposal facilities participating in the CARS Program, which is a temporary program covering eligible automobile purchases/leases occurring between July 1, 2009 and November 1, 2009. The system of records is more thoroughly detailed below and in the Privacy Impact Assessment (PIA) that NHTSA will include in the docket for the CARS final rule at *http://www.regulations.gov,* being published in the **Federal Register** on or about July 24, 2009 and on the DOT Privacy Web site at *http://www.dot.gov/privacy.*

DATES: Effective July 24, 2009. The CARS Act requires the Secretary of Transportation, acting through NHTSA, to issue final regulations within 30 days after enactment (*i.e.,* by July 24, 2009), ''notwithstanding'' the notice and comment requirements of the Administrative Procedure Act (5 U.S.C. 553). NHTSA established a Web site to convey information about the program and a hotline to answer questions about the program. On July 2, 2009, NHTSA published a document in the **Federal Register** (74 FR 31812) providing additional useful information, in advance of issuance of its final rule. NHTSA could not finalize its System of Records Notice (SORN) prior to completion of the CARS final rule, so this SORN is being published today, concurrent with the final rule. Due to the extremely short time afforded by the CARS Act to develop and complete the CARS rulemaking and implement this 4-month program, NHTSA was precluded from publishing its rule for notice and comment. It found for good cause that providing notice and comment on the final rule would be impracticable and contrary to the public interest. For the same reason, NHTSA must begin operating the CARS program system of records on or about July 24, 2009, prior to completion of a 30-day public notice and comment period under this SORN. NHTSA nonetheless seeks and will accept public comment on this SORN for a 30-day period. Because our ability to consider comments received may be limited, we encourage the earliest possible submission of comments. If feasible, we may publish an amended SORN in light of any comments received.

ADDRESSES: Send comments to Dee Smith, NHTSA Privacy Officer, NHTSA Office of the CIO, NPO–420, U.S. Department of Transportation, 1200 New Jersey Avenue, SE., Washington, DC 20590 or *dee.smith@dot.gov.*

FOR FURTHER INFORMATION CONTACT: For privacy issues please contact: Dee Smith, NHTSA Privacy Officer, NHTSA Office of the CIO, NPO–420, U.S. Department of Transportation, 1200 New Jersey Avenue, SE., Washington, DC 20590 or *dee.smith@dot.gov.*

SUPPLEMENTARY INFORMATION:

I. CARS Program

On June 24, 2009, the President signed into law the Consumer Assistance to Recycle and Save Act of 2009 (the CARS Act) (Pub. L. 111–32). The Act establishes, within DOT's National Highway Traffic Safety Administration (NHTSA), a temporary program under which an owner of a motor vehicle meeting statutorily specified criteria may trade in the vehicle and receive a monetary credit from the dealer toward the purchase or lease of a new motor vehicle meeting statutorily specified criteria (the CARS Program or Program).

The Program covers qualifying transactions that occur between July 1, 2009 and November 1, 2009. If all of the conditions of eligibility are met and the dealer provides NHTSA with sufficient documentation relating to the transaction, NHTSA will make an electronic payment to the dealer equal to the amount of the credit extended by the dealer to the consumer, not exceeding the statutorily authorized amount. The dealer must agree to transfer the trade-in vehicle to a salvage auction or disposal facility that will crush or shred it so that it will never be returned to the road, although parts of the vehicle other than the engine block may be sold prior to disposal.

Under the Program, NHTSA must collect a variety of information from individuals and entities about qualifying transactions. Vehicle manufacturers must provide data about vehicles and authorized dealers. Dealers must provide information about their business operations and individual financial transactions. Salvage auctions and disposal facilities may be required to provide comparable data about their business operations and information confirming the sale or destruction of trade-in vehicles. This information is required to ensure compliance with the terms of the CARS Act—specifically, to verify that purchasing consumers, new and trade-in vehicles, dealers, salvage auctions and disposal facilities are eligible to participate in the Program; to identify, prevent and penalize fraud; and to confirm appropriate disposal of the trade-in vehicles. Participating car buyers also will be asked to complete a survey about the Program for use in reporting to Congress on the efficacy of the Program, as mandated by the CARS statute. Surveys will be voluntary and anonymous. Additionally, under the Act, NHTSA is required to coordinate with the U.S. Department of Justice (DOJ) to ensure that the National Motor Vehicle Title Information System (NMVTIS) (which is administrated by the American Association of Motor Vehicle Administrators (AAMVA)) is updated appropriately to reflect the disposal of vehicles traded in under the CARS Program.

II. CARS Database System

In order to support the CARS program, NHTSA will utilize one or more secure databases (*i.e.,* the CARS Database System) to collect, process and store information about eligible transactions and about car purchasers/lessees, dealers, salvage auctions and disposal facilities participating in the CARS program. This information will include Personally Identifiable Information (PII), including financial transaction information of individual car purchasers/lessees, and may include PII about a limited number of salvage auctions and disposal facilities participating in the program, which in some States may be operated by individuals (sole proprietors).

III. The Privacy Act

The Privacy Act (5 U.S.C. 552a) governs the means by which the United States Government collects, maintains, and uses PII in a system of records. A ''system of records'' is a group of any records under the control of a Federal agency from which information about individuals is retrieved by name or other personal identifier.

The Privacy Act requires each agency to publish in the **Federal Register** a notice (SORN) identifying and describing each system of records the agency maintains, including the purposes for which the agency uses PII in the system, the routine uses for which the agency discloses such information outside the agency, and how individuals record subject can exercise their rights under the Privacy Act (*e.g.,* to determine if the system contains information about them).

IV. Privacy Impact Assessment

NHTSA is publishing a Privacy Impact Assessment (PIA) to coincide with this SORN.

In accordance with 5 U.S.C. 552a(r), a report on the establishment of this new system of records has been sent to Congress and to the Office of Management and Budget.

SYSTEM NUMBER:
DOT/NHTSA 464

SYSTEM NAME:

CARS Database System.

SECURITY CLASSIFICATION:

Sensitive, unclassified.

SYSTEM LOCATION:

Servers: The Servers hosting the CARS Database System are housed in a contractor-owned facility at Oracle On Demand in Austin, Texas.

Portals: This system is accessed via portals located at:

- Registered, participating new car dealers via the Internet at *http://www.cars.gov.*
- NHTSA Headquarters, located at 1200 New Jersey Avenue, and in various of NHTSA's regional offices and at other off-site locations used in connection with CARS Program.
- The off-site facilities of NHTSA and DOT Contractors.

Authorized users at NHTSA Headquarters access their records in the CARS Database System via the DOT Intranet. Authorized users at the NHTSA portal locations and at the contractor portal locations access their records in the CARS Database System via the Internet at *http://www.cars.gov.*

Some system software is maintained by Oracle On Demand in Austin, Texas. The CARS Database System interfaces with participating new car dealers, and with other DOT systems used to pay the dealers, through that system software, as well as other software maintained by the Federal Aviation Administration's Enterprise Services Center (ESC) at the Mike Monroney Aeronautical Center, Oklahoma City, OK.

Any hard-copy files containing CARS-related records will be maintained at the pertinent NHTSA, DOT or Contractor portal locations.

CATEGORIES OF INDIVIDUALS COVERED BY THE SYSTEM:

The system covers the following individuals:

- Individual buyers/lessees of new cars participating in the CARS program.
- Sole proprietors of salvage auctions and automobile disposal facilities participating in the CARS program.

CATEGORIES OF RECORDS IN THE SYSTEM:

- Records about individual car buyers/lessees participating in the CARS Program consist of transaction records containing the following PII data elements: name and address of the purchaser/lessee; the purchaser/lessee's State driver's license number or other State identification number; the State driver's license number or other State identification number of the co-purchaser/lessee (if any), as listed in the title; and the Vehicle Identification Number (VIN) of the trade-in vehicle and the VIN of the new vehicle. Depending on the State and content of the sales contract, PII also may be found on the following documents required to

be scanned by dealers and entered into the system: Document of title of trade-in vehicle (or, in certain States, documentation of paper-less title), proof of insurance for trade-in vehicle (cards or letter from insurer), trade-in registration, sales summary sheet, and salvage certificate.

• Records about any sole proprietors of salvage auctions and disposal facilities participating in the CARS Program consist of business operation records that may include the following PII elements: Name, home address, telephone number and e-mail address, to the extent that such individuals operate their businesses out of their homes.

AUTHORITY FOR MAINTENANCE OF THE SYSTEM:

Public Law 111–32, 123 Stat. 1859.

PURPOSE(S):

The purpose for collecting records in the CARS Database System is to implement the CARS Program and ensure compliance with the terms of the CARS Act. Specifically:

• NHTSA personnel and contractors use the information that each car dealer enters into the CARS database to verify that purchasing/leasing consumers, new and trade-in vehicles, dealers, salvage auctions and disposal facilities are eligible to participate in the Program.

• NHTSA personnel and contractors use information entered into the system to determine if individual transactions satisfy CARS program requirements.

• NHTSA personnel and contractors use the system to send information about eligible transaction to a DOT financial management system to process vouchers and cause dealers to be paid by DOT/NHTSA for eligible transactions.

• Both to establish eligibility and for audit purposes, NHTSA compares dealer-entered information in the CARS Database System to purchaser/lessee and transactional information already within the system.

• NHTSA personnel and contractors and the DOT Inspector General may use information about individual transactions, purchasers/lessees, dealers, salvage auctions and disposal facilities participating in the CARS Program to prevent, identify and investigate program violations and fraud.

• NHTSA personnel and contractors will use survey data provided by purchasers/lessees to report to Congress on the efficacy of the Program.

ROUTINE USES OF RECORDS MAINTAINED IN THE SYSTEM, INCLUDING CATEGORIES OF USERS AND THE PURPOSES OF SUCH USES:

The CARS Database System shares PII about individual purchasers/leasees and their new and trade-in vehicles, and about any sole proprietors of salvage auctions and automobile disposal facilities, as follows:

• NHTSA personnel and contractors will use VINs from the system to update DOJ's NMVTIS database, as required by the CARS Act.

• NHTSA personnel and contractors, as well as the DOT Inspector General, may provide to the U.S. Department of Justice information about certain transactions, including PII about individual purchasers/lessees and any sole proprietors of salvage auctions and disposal facilities participating in the CARS Program, for purposes of investigating and prosecuting criminal violations, including fraud.

• NHTSA personnel and contractors will provide to States lists of VINs of trade-in vehicles for which they issued car titles, for purposes of cancelling the car titles.

• Salvage auctions and disposal facilities receive the VIN and voucher transaction code for each trade-in car sent to them for sale or destruction. They include the VIN and code on a certificate that they return to DOT/NHTSA.

Other possible routine uses of the information, applicable to all DOT systems, are published in the **Federal Register** at 65 FR 19476 (April 11, 2000), under ''Prefatory Statement of General Routine Uses'' (available at *http://www.dot.gov/privacy/privacyactnotices/*).

DISCLOSURE TO CONSUMER REPORTING AGENCIES:

None.

POLICIES AND PRACTICES FOR STORING, RETRIEVING, ACCESSING, RETAINING, AND DISPOSING OF RECORDS IN THE SYSTEM:

STORAGE:

Records are stored in databases, on magnetic tape, on magnetic disk and in secure file folders at DOT, NHTSA and contractor portal locations, as required. The databases are on servers; the data is typically stored on a Storage Area Network (SAN) and backed-up on tape stored in Oklahoma City, Oklahoma, Kansas City, Kansas and Austin, Texas. Magnetic tape and disk records are maintained at the central maintenance site in Oklahoma City, at the disaster recovery site in Kansas City, and at the remote hosting site in Austin. Storage of file folders is at the geographic location of the pertinent portal location.

RETRIEVABILITY:

Records related to individual purchasing/leasing consumers participating in the CARS program are retrieved by State identification number (ID). This will be either a State driver's license and/or another form of State ID (*i.e.,* driver's permit or standard ID).

Records related to any sole proprietors of automobile disposal facilities are retrieved through the use of a unique number given to the proprietors through the Environmental Protection Agency (EPA). The EPA number will be listed on the *http://www.cars.gov* Web site for disposal facilities that are authorized to receive CARS vehicles.

SAFEGUARDS:

Access to records in the CARS Database system will be limited to NHTSA personnel and contractors through password security, encryption, firewalls, and secured operating system, except for bank account information and a limited amount of eligible transaction information which will be encrypted and sent securely to DOT's financial management system for purposes of effecting payments to participating dealers for eligible transactions.

Registered dealers entering data into the system will be able to access only records relating to transactions initiated by the same dealer—and not records relating to other transactions entered into the system.

Any hard copies of CARS-related records containing PII at DOT, NHTSA and contractor portal locations will be kept in file folders locked in secure file cabinets during non-duty hours.

RETENTION AND DISPOSAL:

Under the CARS Final Rule, records created under the CARS program will be kept for 5 years. Records that are needed longer, such as to resolve claims and audit exceptions and prosecute fraud, will be retained until such matters are resolved.

The records may be moved at a future date to one or more different locations in response to the operational needs of DOT, NHTSA, the CARS Program or DOT/NHTSA contractors

SYSTEM MANAGER AND ADDRESS:

The CARS Database System Manager (NPO–400), Office of the Chief Information Officer, NHTSA, 1200 New Jersey Avenue, SE., Washington, DC 20590.

NOTIFICATION PROCEDURE:

Individuals or business entities wishing to know if their records appear in this system should direct their

requests to the System Manager identified above.

RECORD ACCESS PROCEDURE:

Individuals seeking access to information about them in this system should follow the same procedure as indicated under ''Notification Procedure.''

CONTESTING RECORDS PROCEDURE:

Individuals seeking to contest the content of information about them in this system should follow the same procedure as indicated under ''Notification Procedure.''

RECORD SOURCE CATEGORIES:

Transaction information pertaining to individual purchasers/lessees is obtained by car dealers, on behalf of NHTSA, directly from the individuals, from source documents the individuals provide (some of which are scanned into the database by the dealer), and/or directly from their new and trade-in cars. Dealers scan and/or enter the information into the CARS database and manually compare the information to the source documents or systems to verify its accuracy. NHTSA personnel and contractors then review the records to ensure accuracy prior to assessing the eligibility of individual transactions.

Business operations information about any sole proprietor salvage auctions and disposal facilities is obtained directly from the proprietors.

EXEMPTIONS CLAIMED FOR THIS SYSTEM:

None.

Dated: July 21, 2009.

Habib Azarsina,

Departmental Privacy Officer.

[FR Doc. E9–17791 Filed 7–24–09; 8:45 am]

BILLING CODE 4910–9X–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

[Summary Notice No. PE–2007–30]

Petition for Exemption; Summary of Petition Received

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Notice of petition for exemption received.

SUMMARY: This notice contains a summary of a petition seeking relief from specified requirements of 14 CFR. The purpose of this notice is to improve the public's awareness of, and participation in, this aspect of FAA's regulatory activities. Neither publication of this notice nor the inclusion or omission of information in the summary is intended to affect the legal status of the petition or its final disposition.

DATES: Comments on this petition must identify the petition docket number involved and must be received on or before August 17, 2009.

ADDRESSES: You may send comments identified by Docket Number FAA–2009–0407 using any of the following methods:

• *Government-wide rulemaking Web site:* Go to *http://www.regulations.gov* and follow the instructions for sending your comments electronically.

• *Mail:* Send comments to the Docket Management Facility; U.S. Department of Transportation, 1200 New Jersey Avenue, SE., West Building Ground Floor, Room W12–140, Washington, DC 20590.

• *Fax:* Fax comments to the Docket Management Facility at 202–493–2251.

• *Hand Delivery:* Bring comments to the Docket Management Facility in Room W12–140 of the West Building Ground Floor at 1200 New Jersey Avenue, SE., Washington, DC, between 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays.

Privacy: We will post all comments we receive, without change, to *http://www.regulations.gov,* including any personal information you provide. Using the search function of our docket Web site, anyone can find and read the comments received into any of our dockets, including the name of the individual sending the comment (or signing the comment for an association, business, labor union, *etc.*). You may review DOT's complete Privacy Act Statement in the **Federal Register** published on April 11, 2000 (65 FR 19477–78).

Docket: To read background documents or comments received, go to *http://www.regulations.gov* at any time or to the Docket Management Facility in Room W12–140 of the West Building Ground Floor at 1200 New Jersey Avenue, SE., Washington, DC, between 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays.

FOR FURTHER INFORMATION CONTACT: Ralen Gao, Office of Rulemaking, 800 Independence Ave., SW., Room 810, Washington, DC 20591.

This notice is published pursuant to 14 CFR 11.85.

Issued in Washington, DC, on July 21, 2009.

Pamela Hamilton-Powell,

Director, Office of Rulemaking.

Petition for Exemption

Docket No.: FAA–2009–0407.

Petitioner: Atlas Air and Polar Air Cargo.

Section of 14 CFR Affected: 14 CFR 25.1301(a), § 25.1415(b), § 91.9(a) and (b), § 121.153(a)(2), § 121.339(a)(2)

Description of Relief Sought: Atlas Air seeks to replace its pressure check visual inspection interval from before each takeoff to an ''A'' check interval, conducted every 650 flight hours, or approximately every 54 days.

[FR Doc. E9–17772 Filed 7–24–09; 8:45 am]

BILLING CODE 4910–13–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

[Summary Notice No. PE–2009–27]

Petition for Exemption; Summary of Petition Received

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Notice of petition for exemption received.

SUMMARY: This notice contains a summary of a petition seeking relief from specified requirements of 14 CFR. The purpose of this notice is to improve the public's awareness of, and participation in, this aspect of FAA's regulatory activities. Neither publication of this notice nor the inclusion or omission of information in the summary is intended to affect the legal status of the petition or its final disposition.

DATES: Comments on this petition must identify the petition docket number involved and must be received on or before August 17, 2009.

ADDRESSES: You may send comments identified by Docket Number FAA–2009–0533 using any of the following methods:

• *Government-wide rulemaking Web site:* Go to *http://www.regulations.gov* and follow the instructions for sending your comments electronically.

• *Mail:* Send comments to the Docket Management Facility; U.S. Department of Transportation (DOT), 1200 New Jersey Avenue, SE., West Building Ground Floor, Room W12–140, Washington, DC 20590.

• *Fax:* Fax comments to the Docket Management Facility at 202–493–2251.

• *Hand Delivery:* Bring comments to the Docket Management Facility in Room W12–140 of the West Building Ground Floor at 1200 New Jersey Avenue, SE., Washington, DC, between 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays.

Privacy: We will post all comments we receive, without change, to *http://*

www.regulations.gov, including any personal information you provide. Using the search function of our docket Web site, anyone can find and read the comments received into any of our dockets, including the name of the individual sending the comment (or signing the comment for an association, business, labor union, *etc.*). You may review DOT's complete Privacy Act Statement in the **Federal Register** published on April 11, 2000 (65 FR 19477–78).

Docket: To read background documents or comments received, go to *http://www.regulations.gov* at any time or to the Docket Management Facility in Room W12–140 of the West Building Ground Floor at 1200 New Jersey Avenue, SE., Washington, DC, between 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays.

FOR FURTHER INFORMATION CONTACT: Maria G. Delgado, ANM–113, (425) 227–2775, FAA, Transport Airplane Directorate, 1601 Lind Ave SW., Renton, Washington 98057–3356; or Ralen Gao, ARM–200, (202) 267–3168, FAA, Office of Rulemaking, 800 Independence Ave., SW., Washington, DC 20591.

This notice is published pursuant to 14 CFR 11.85.

Issued in Washington, DC, on July 21, 2009.

Pamela Hamilton-Powell,

Director, Office of Rulemaking.

Petition for Exemption

Docket No.: FAA–2009–0533.

Petitioner: L–3 Communications Integrated Systems.

Sections of 14 CFR Affected: §§ 26.11 and 26.47.

Description of Relief Sought: The petitioner requests an exemption for certain McDonnell Douglas Model DC–9–32 airplanes and Boeing Model 747–200B (E4A, E4B, 2G4B) airplanes, modified according to all future supplemental type certificates, for relief from developing instructions for continued airworthiness applicable to an airplane's electrical wiring interconnection systems (§ 26.11), and from developing damage tolerance data for repairs and alterations (§ 26.47).

[FR Doc. E9–17770 Filed 7–24–09; 8:45 am]

BILLING CODE 4910–13–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

[Summary Notice No. PE–2009–28]

Petition for Exemption; Summary of Petition Received

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Notice of petition for exemption received.

SUMMARY: This notice contains a summary of a petition seeking relief from specified requirements of 14 CFR. The purpose of this notice is to improve the public's awareness of, and participation in, this aspect of FAA's regulatory activities. Neither publication of this notice nor the inclusion or omission of information in the summary is intended to affect the legal status of the petition or its final disposition.

DATES: Comments on this petition must identify the petition docket number involved and must be received on or before August 17, 2009.

ADDRESSES: You may send comments identified by Docket Number FAA–2009–0647 using any of the following methods:

- *Government-wide rulemaking Web site:* Go to *http://www.regulations.gov* and follow the instructions for sending your comments electronically.
- *Mail:* Send comments to the Docket Management Facility; U.S. Department of Transportation (DOT), 1200 New Jersey Avenue, SE., West Building Ground Floor, Room W12–140, Washington, DC 20590.
- *Fax:* Fax comments to the Docket Management Facility at 202–493–2251.
- *Hand Delivery:* Bring comments to the Docket Management Facility in Room W12–140 of the West Building Ground Floor at 1200 New Jersey Avenue, SE., Washington, DC, between 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays.

Privacy: We will post all comments we receive, without change, to *http://www.regulations.gov,* including any personal information you provide. Using the search function of our docket Web site, anyone can find and read the comments received into any of our dockets, including the name of the individual sending the comment (or signing the comment for an association, business, labor union, *etc.*). You may review DOT's complete Privacy Act Statement in the **Federal Register** published on April 11, 2000 (65 FR 19477–78).

Docket: To read background documents or comments received, go to *http://www.regulations.gov* at any time or to the Docket Management Facility in Room W12–140 of the West Building Ground Floor at 1200 New Jersey Avenue, SE., Washington, DC, between 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays.

FOR FURTHER INFORMATION CONTACT: Kenna Sinclair, ANM–113, (425) 227–1556, FAA, Transport Airplane Directorate, 1601 Lind Ave SW., Renton, Washington 98057–3356; or Ralen Gao, ARM–200, (202) 267–3168, FAA, Office of Rulemaking, 800 Independence Ave SW., Washington, DC 20591.

This notice is published pursuant to 14 CFR 11.85.

Issued in Washington, DC, on July 21, 2009.

Pamela Hamilton-Powell,

Director, Office of Rulemaking.

Petition for Exemption

Docket No.: FAA–2009–0647.

Petitioner: Airbus.

Section of 14 CFR Affected: Section 26.33.

Description of Relief Sought: The petitioner requests an exemption from the requirements of § 26.33(c), (d), (e), (f), and (h) for its Model A300–600R airplanes, to be excused from having to develop design changes to reduce the center tank flammability exposure or to mitigate the effect of a fuel vapor ignition.

[FR Doc. E9–17771 Filed 7–24–09; 8:45 am]

BILLING CODE 4910–13–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

[Summary Notice No. PE–2009–29]

Petition for Exemption; Summary of Petition Received

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Notice of petition for exemption received.

SUMMARY: This notice contains a summary of a petition seeking relief from specified requirements of 14 CFR. The purpose of this notice is to improve the public's awareness of, and participation in, this aspect of FAA's regulatory activities. Neither publication of this notice nor the inclusion or omission of information in the summary is intended to affect the legal status of the petition or its final disposition.

DATES: Comments on this petition must identify the petition docket number involved and must be received on or before August 17, 2009.

ADDRESSES: You may send comments identified by Docket Number FAA–2009–0628, using any of the following methods:

• *Government-wide rulemaking Web site:* Go to *http://www.regulations.gov* and follow the instructions for sending your comments electronically.

• *Mail:* Send comments to the Docket Management Facility; U.S. Department of Transportation, 1200 New Jersey Avenue, SE., West Building Ground Floor, Room W12–140, Washington, DC 20590.

• *Fax:* Fax comments to the Docket Management Facility at 202–493–2251.

• *Hand Delivery:* Bring comments to the Docket Management Facility in Room W12–140 of the West Building Ground Floor at 1200 New Jersey Avenue, SE., Washington, DC, between 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays.

Privacy: We will post all comments we receive, without change, to *http://www.regulations.gov*, including any personal information you provide. Using the search function of our docket Web site, anyone can find and read the comments received into any of our dockets, including the name of the individual sending the comment (or signing the comment for an association, business, labor union, *etc.*). You may review DOT's complete Privacy Act Statement in the **Federal Register** published on April 11, 2000 (65 FR 19477–78).

Docket: To read background documents or comments received, go to *http://www.regulations.gov* at any time or to the Docket Management Facility in Room W12–140 of the West Building Ground Floor at 1200 New Jersey Avenue, SE., Washington, DC, between 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays.

FOR FURTHER INFORMATION CONTACT: Jan Thor, ANM–113, (425) 227–2127, Federal Aviation Administration, 1601 Lind Avenue, SW., Renton, WA 98057–3356, or Ralen Gao, ARM–209, (202–267–3168), Office of Rulemaking (ARM–1), Federal Aviation Administration, 800 Independence Avenue, SW., Washington, DC 20591.

This notice is published pursuant to 14 CFR 11.85.

Issued in Washington, DC, on July 21, 2009.

Pamela Hamilton-Powell,

Director, Office of Rulemaking.

Petition for Exemption

Docket No.: FAA–2009–0628.

Petitioner: The Boeing Company.

Section of 14 CFR Affected: 14 CFR 25.809(a).

Description of Relief Sought: The petitioner seeks relief for its Boeing 787 airplanes from the requirement that likely areas of evacuee ground contact must be viewable during ''all lighting conditions'' before opening an emergency exit.

[FR Doc. E9–17773 Filed 7–24–09; 8:45 am]

BILLING CODE 4910–13–P

DEPARTMENT OF THE TREASURY

Internal Revenue Service

[Notice 2008–XX]

Proposed Collection; Comment Request for Notice 2008–XX

AGENCY: Internal Revenue Service (IRS), Treasury.

ACTION: Notice and request for comments.

SUMMARY: The Department of the Treasury, as part of its continuing effort to reduce paperwork and respondent burden, invites the general public and other Federal agencies to take this opportunity to comment on proposed and/or continuing information collections, as required by the Paperwork Reduction Act of 1995, Public Law 104–13 (44 U.S.C. 3506(c)(2)(A)). Currently, the IRS is soliciting comments concerning Notice 2008–XX, Guidance for Expatriates and Recipients of Foreign Source Gifts and Bequests Under Sections 877A, 2801, and 6039G.

DATES: Written comments should be received on or before September 25, 2009 to be assured of consideration.

ADDRESSES: Direct all written comments to R. Joseph Durbala, Internal Revenue Service, Room 6129, 1111 Constitution Avenue, NW., Washington, DC 20224.

FOR FURTHER INFORMATION CONTACT: Requests for additional information or copies of the regulations should be directed to Dawn Bidne at Internal Revenue Service, Room 6129, 1111 Constitution Avenue, NW., Washington, DC 20224, or at (202) 622–3933, or through the Internet at *Dawn.E.Bidne@irs.gov.*

SUPPLEMENTARY INFORMATION:

Title: Guidance for Expatriates and Recipients of Foreign Source Gifts and Bequests Under Sections 877A, 2801, and 6039G.

OMB Number: 1545–2123.

Regulation Project Number: Notice 2008–XX.

Abstract: Section 301 of the Heroes Earnings Assistance and Relief Tax Act of 2008 (the ''Act'') enacted new sections 877A and 2801 of the Internal Revenue Code (''Code''), amended sections 6039G and 7701(a), made conforming amendments to sections 877(e) and 7701(b), and repealed section 7701(n). This notice provides guidance regarding certain Federal tax consequences under these sections for individuals who renounce U.S. citizenship or cease to be taxed as lawful permanent residents of the United States.

Current Actions: There is no change to this existing regulation.

Type of Review: Extension of a currently approved collection.

Affected Public: Individuals or households.

Estimated Number of Respondents: 100.

Estimated Time per Respondent: 4 Hours 17 minutes.

Estimated Total Annual Burden Hours: 420.

The following paragraph applies to all of the collections of information covered by this notice:

An agency may not conduct or sponsor, and a person is not required to respond to, a collection of information unless the collection of information displays a valid OMB control number. Books or records relating to a collection of information must be retained as long as their contents may become material in the administration of any internal revenue law. Generally, tax returns and tax return information are confidential, as required by 26 U.S.C. 6103.

Request for Comments: Comments submitted in response to this notice will be summarized and/or included in the request for OMB approval. All comments will become a matter of public record. Comments are invited on: (a) Whether the collection of information is necessary for the proper performance of the functions of the agency, including whether the information shall have practical utility; (b) the accuracy of the agency's estimate of the burden of the collection of information; (c) ways to enhance the quality, utility, and clarity of the information to be collected; (d) ways to minimize the burden of the collection of information on respondents, including through the use of automated collection techniques or other forms of information technology; and (e) estimates of capital or start-up costs and costs of operation, maintenance, and purchase of services to provide information.

Approved: July 17, 2009.

R. Joseph Durbala,

IRS Reports Clearance Officer.

[FR Doc. E9–17741 Filed 7–24–09; 8:45 am]

BILLING CODE 4830–01–P

DEPARTMENT OF VETERANS AFFAIRS

Privacy Act; Systems of Records

AGENCY: Department of Veteran Affairs.

ACTION: Notice of establishment of new system of records.

SUMMARY: The Privacy Act of 1974 (5 U.S.C. 552a (e)(4)) requires that all agencies publish in the **Federal Register** a notice of the existence and character of their systems of records. Notice is hereby given that the Department of Veterans Affairs (VA) is establishing a new electronic system of records entitled ''Veterans Affairs/Department of Defense Identity Repository (VADIR)—VA'' (138VA005Q).

DATES: Comments on this new system of records must be received no later than August 26, 2009. If no public comment is received, the new system will become effective August 26, 2009.

ADDRESSES: Written comments may be submitted through *http://www.Regulations.gov;* by mail or hand-delivery to the Director, Regulations Management (02REG), Department of Veterans Affairs, 810 Vermont Avenue, NW., Room 1063B, Washington, DC 20420; or by fax to (202) 273–9026. Copies of comments received will be available for public inspection in the Office of Regulation Policy and Management, Room 1063B, between the hours of 8 a.m. and 4:30 p.m., Monday through Friday (except holidays). Please call (202) 461–4902 for an appointment. In addition, during the comment period, comments may viewed online through the Federal Docket Management System (FDMS) at *http://www.Regulations.gov.*

FOR FURTHER INFORMATION CONTACT: David Lindsey, Program Manager, VADIR, Registration and Eligibility (005Q3), 810 Vermont Ave, NW., Washington, DC 20420; telephone (202) 245–1679.

SUPPLEMENTARY INFORMATION:

a. Description of the Proposed System of Records:

The Veterans Affairs/Department of Defense Identity Repository (VADIR) database is an electronic repository of military personnel's military history, payroll information and their dependents' data provided to VA by the Department of Defense's Defense Manpower Data Center (DMDC). The VADIR database repository is used in conjunction with other applications across VA business lines to provide an electronic consolidated view of comprehensive eligibility and benefits utilization data from across VA and Department of Defense (DoD). VA applications use the VADIR database to retrieve profile data, as well as address, military history, and information on compensation and benefits, disabilities, and dependents.

b. Proposed Routine Use Disclosures of Data in the System:

1. The record of an individual included in this system may be provided to DoD systems or offices for use in connection with matters relating to one of DoD's programs to enable delivery of healthcare or other DoD benefits to eligible beneficiaries.

2. The name, address, VA file number, effective date of compensation or pension, current and historical benefit pay amounts for compensation or pension, service information, date of birth, competency payment status, incarceration status, and social security number of veterans and their surviving spouses may be disclosed to the Department of Defense Manpower Data Center (DMDC) to reconcile the amount and/or waiver of service, department and retired pay. These records may also be disclosed as part of a computer matching program to accomplish these purposes.

3. The name, address, VA file number, date of birth, date of death, social security number, and service information may be disclosed to DoD. DoD will use this information to identify retired veterans and dependent members of their families who have entitlement to DoD benefits but who are not identified in the Department of Defense Enrollment Eligibility Reporting System (DEERS) program and to assist in determining eligibility for Civilian Health and Medical Program of the Uniformed Services (CHAMPUS) benefits. This purpose is consistent with 38 U.S.C. 5701.

4. The name(s) and address (es) of a veteran may be disclosed to another Federal agency or to a contractor of that agency, at the written request of the head of that agency or designee of the head of that agency for the purpose of conducting government research necessary to accomplish a statutory purpose of that agency.

5. VA may disclose on its own initiative any information in this system, except the names and addresses of veterans and their dependents, that is relevant to a suspected or reasonably imminent violation of law, whether civil, criminal, or regulatory in nature and whether arising by general or program statute or by regulation, rule, or order issued pursuant thereto, a Federal, State, local, tribal, or foreign agency charged with the responsibility of investigating or prosecuting such violation, or charged with enforcing or implementing the statute, regulation, rule, or order. VA may also disclose on its own initiative the names and addresses of veterans and their dependents to a Federal agency charged with the responsibility of investigating or prosecuting civil, criminal, or regulatory violations of law, or charged with enforcing or implementing the statute, regulation, rule, or order issued pursuant thereto.

6. VA may disclose information in the system of records to the Department of Justice (DOJ), either on VA's initiative or in response to DOJ's request for the information, after either VA or DOJ determines that such information is relevant to DOJ's representation of the United States or any of its components in legal proceeding before a court or adjudicative body, provided that, in each case, the agency also determines prior to disclosure that release of records to the DOJ is a use of information contained in the records that is compatible with the purpose for which VA collected the records. VA, on its own initiative, may disclose records in this system of records in legal proceedings before a court or administrative body after determining that the disclosure of the records to the court or administrative body is a use of the information contained in the records that is compatible with the purpose for which VA collected the records.

7. Where VA determines that there is good cause to question the legality or ethical propriety of the conduct of a person or organization representing a person in a matter before VA, a record from this system may be disclosed, on VA's initiative, to any or all of the following: (1) Applicable civil or criminal law enforcement authorities and (2) a person or entity responsible for the licensing, supervision, or professional discipline of the person or organization acting as representative. Names and home addresses of veterans and their dependents will be released on VA's initiative under this routine use only to Federal entities when VA believes that the names and addresses are required by the Federal department or agency.

8. Disclosure of relevant information may be made to individuals, organizations, private or public agencies, or other entities or individuals with whom VA has a contract or agreement to perform such services as VA may deem practicable for the purposes of laws administered by VA, in order for the contractor, subcontractor or entity or individual with whom VA has an agreement or contract to perform the services of the contract or agreement.

9. VA may disclose any information or records to appropriate agencies, entities, and persons when (1) it is suspected or confirmed that the integrity or confidentiality of information in the system of records has been compromised; (2) VA has determined that as a result of the suspected or confirmed compromise there is a risk of embarrassment or harm to the reputations of the records subjects, harm to economic or property interest, identity theft or fraud, or harm to the security, confidentiality or integrity of this system or other systems or programs (whether maintained by VA or another agency or entity) that rely upon the potentially compromised information; and (3) the disclosure is made to such agencies, entities, and persons whom VA determines are reasonably necessary to assist or carry out VA's efforts to respond to the suspected or confirmed compromise and prevent, minimize, or remedy such harm.

10. Disclosure to other Federal agencies may be made to assist such agencies in preventing and detecting possible fraud or abuse by individuals in their operations and programs. This routine use permits disclosures by VA to respond to a suspected or confirmed data breach, including the conduct of any risk analysis or provision or credit protection services as provide in 38 U.S.C. 5724, as the terms are defined in 38 U.S.C. 5727.

11. The record of an individual who is covered by a system of records may be disclosed to a Member of Congress, or a staff person acting for the member, when the member or staff person requests the record on behalf of and at the written request of the individual.

12. Disclosure may be made to the National Archives and Records Administration (NARA) or the General Services Administration (GSA) in records management inspections conducted under authority of Chapter 29 of Title 44 United States Code.

c. Design Constraints—The VADIR system sits within the Austin Automation Center (AAC) in Austin, Texas, and therefore must conform to their requirements and standards established for that environment. This includes requirements such as access control to the systems, revision/patch levels for hardware operating systems and database management systems, and use of security tools such as antivirus software, intrusion detection software and spyware. All data stored by VADIR are received from DMDC; therefore any changes requiring additional data or data format changes must be coordinated with the DMDC Database Administrator.

d. Certification & Accreditation—The VADIR database repository has gone through the Certification & Accreditation (C&A) process. During this process, the VADIR database underwent a series of risk and security assessments and had extensive documentation developed to support the integrity of the system. The VA C&A process is used to certify that the VADIR system has adequate, logical, management and technical security controls in place that minimize the system's risk to unauthorized access and disclosure.

e. Privacy Impact Assessment—The VADIR database repository system has had a comprehensive Privacy Impact Assessment (PIA) conducted on it to ensure that the privacy of the information contained within the system is adequately protected according to VA and Office of Management and Budget (OMB) privacy and security standards.

f. Internal Communications Architecture—Records are transmitted between DMDC and VA over a dedicated telecommunications circuit using approved encryption technologies. Records (or information contained in records) are maintained in electronic format in the VADIR Oracle database. These records cannot be directly accessed by any VA employee or other users. Information from VADIR is disseminated in three ways: (1) Approved VA systems electronically request and receive data from VADIR over the internal VA network, (2) data is provided over the dedicated circuit between VADIR and DMDC for reconciliation of records or to identify retired veterans and dependents who have entitlements to DoD benefits but are not identified in DEERS, and (3) periodic electronic data extracts of subsets of information contained in VADIR are provided to approved VA offices/systems over the internal VA network.

g. File Extracts—Daily extracts of subsets of data contained in VADIR are created to support VA business lines. These extracts are transmitted to approved VA office/systems over the internal VA network using approved security protocols to protect the data.

h. External Interfaces—DoD data feed that updates the primary VADIR repository is transmitted from DMDC at Auburn Hills, Michigan, to the AAC over a dedicated communications circuit; a second data feed transmits the same data from DMDC to the VADIR disaster recovery site in Hines, Illinois, over another dedicated circuit. All data transmissions are encrypted.

i. Interface Architecture—No users can access VADIR directly. Other VA systems request specific information from VADIR and that information is displayed to the user by the requesting system. VADIR also provides periodic data extracts of subsets of data contained in the VADIR database to approved VA offices/systems.

j. Compatibility of the Proposed Routine Uses—The Privacy Act permits VA to disclose information about the individuals contained in a system of records without their consent for a routine use, when the information will be used for a purpose that is compatible with the purpose for which the information was collected. In all of the routine use disclosures described above, either the recipient of the information will use the information in connection with a matter relating to one of VA's programs, to provide a benefit to the veteran, or disclosure is required by law.

The notice of intent to publish an advance copy of the system notice has been sent to the appropriate Congressional committees and to the Director of the Office of Management and Budget (OMB) as required by 5 U.S.C. 552a(r) (Privacy Act) and guidelines issued by OMB (65 FR 77677), December 12, 2000.

Approved: July 8, 2009.

John R. Gingrich,

Chief of Staff, Department of Veterans Affairs.

138VA005Q

SYSTEM NAME:

''Veterans Affairs Department of Defense Identity Repository (VADIR)—VA'' 138VA005Q.

SYSTEM LOCATION:

The primary VADIR database containing all records is maintained at the Austin Automation Center (AAC) at 1615 East Woodward Street, Austin, Texas 78772. A second VADIR database with an identical set of records is being established as a disaster recovery site at the Data Processing Center at Hines, Illinois. The disaster recovery site will be established in CY 2009. All records are maintained electronically.

CATEGORIES OF INDIVIDUALS COVERED BY THE SYSTEM:

The category of the individuals covered by the VADIR database encompasses veterans, service members, and their dependents. This would include current service members, separated service members, and their dependents; as well as veterans whose

VA military service benefits have been sought by others (e.g., burial benefits).

CATEGORIES OF RECORDS IN THE SYSTEM:

The record, or information contained in the record, may include identifying information (*e.g.,* name, contact information, Social Security number), association to dependents, cross reference to other names used, military service participation and status information (branch of service, rank, enter on duty date, release from active duty date, military occupations, type of duty, character of service, awards), reason and nature of active duty separation (completion of commitment, disability, hardship, etc.), combat/environmental exposures (combat pay, combat awards, theater location), combat deployments (period of deployment, location/country), Guard/Reserve activations (period of activation, type of activation), military casualty/disabilities (line of duty death, physical examination board status, serious/very serious injury status, DoD rated disabilities), education benefit participation, eligibility and usage, healthcare benefit periods of eligibility (TRICARE, CHAMPVA), and VA compensation (rating, Dependency and Indemnity Compensation (DIC), award amount).

AUTHORITY FOR MAINTENANCE OF THE SYSTEM:

The authority for maintaining this system is Title 38 U.S.C. Section 5106.

PURPOSE:

The purpose of VADIR is to receive electronically military personnel and payroll information from the Department of Defense (DoD) in a centralized VA system and then distribute the data to other VA systems and Lines of Business who require the information for health and benefits eligibility determinations. This information is provided to VADIR by the Defense Manpower Data Center (DMDC). VADIR will also provide veterans information concerning education benefits usage and death and disability status, as well as personal and demographic information on veterans discharged prior to 1978 to DMDC for reconciliation purposes.

ROUTINE USES OF RECORDS MAINTAINED IN THE SYSTEM, INCLUDING CATEGORIES OF USERS AND THE PURPOSES OF SUCH USES:

1. The record of an individual included in this system may be provided to DoD systems or offices for use in connection with matters relating to one of DoD's programs to enable delivery of healthcare or other DoD benefits to eligible beneficiaries.

2. The name, address, VA file number, effective date of compensation or pension, current and historical benefit pay amounts for compensation or pension, service information, date of birth, competency payment status, incarceration status, and social security number of veterans and their surviving spouses may be disclosed to the DMDC to reconcile the amount and/or waiver of service, department and retired pay. These records may also be disclosed as part of a computer matching program to accomplish these purposes.

3. The name, address, VA file number, date of birth, date of death, social security number, and service information may be disclosed to DoD's Defense Manpower Data Center. DoD will use this information to identify retired veterans and dependent members of their families who have entitlement to Department of Defense benefits but who are not identified in the Department of Defense Enrollment Eligibility Reporting System (DEERS) program and to assist in determining eligibility for Civilian Health and Medical Program of the Uniformed Services (CHAMPUS) benefits. This purpose is consistent with 38 U.S.C. 5701.

4. The name(s) and address(es) of a veteran may be disclosed to another Federal agency or to a contractor of that agency, at the written request of the head of that agency or designee of the head of that agency for the purpose of conducting government research necessary to accomplish a statutory purpose of that agency.

5. VA may disclose on its own initiative any information in this system, except the names and addresses of veterans and their dependents, that is relevant to a suspected or reasonably imminent violation of law, whether civil, criminal, or regulatory in nature and whether arising by general or program statute or by regulation, rule, or order issued pursuant thereto, a Federal, State, local, tribal, or foreign agency charged with the responsibility of investigating or prosecuting such violation, or charged with enforcing or implementing the statute, regulation, rule, or order. VA may also disclose on its own initiative the names and addresses of veterans and their dependents to a Federal agency charged with the responsibility of investigating or prosecuting civil, criminal, or regulatory violations of law, or charged with enforcing or implementing the statute, regulation, rule, or order issued pursuant thereto.

6. VA may disclose information in the system of records to the Department of Justice (DOJ), either VA's initiative or in response to DOJ's request for the information, after either VA or DOJ determines that such information is relevant to DOJ's representation of the United States or any of its components in legal proceeding before a court or adjudicative body, provided that, in each case, the agency also determines prior to disclosure that release of records to the DOJ is a use of information contained in the records that is compatible with the purpose for which VA collected the records. VA, on its own initiative, may disclose records in this system of records in legal proceedings before a court or administrative body after determining that the disclosure of the records to the court or administrative body is a use of the information contained in the records that is compatible with the purpose for which VA collected the records.

7. Where VA determines that there is good cause to question the legality or ethical propriety of the conduct of a person or organization representing a person in a matter before VA, a record from this system may be disclosed, on VA's initiative, to any or all of the following: (1) Applicable civil or criminal law enforcement authorities and (2) a person or entity responsible for the licensing, supervision, or professional discipline of the person or organization acting as representative. Names and home addresses of veterans and their dependents will be released on VA's initiative under this routine use only to Federal entities when VA believes that the names and addresses are required by the Federal department or agency.

8. Disclosure of relevant information may be made to individuals, organizations, private or public agencies, or other entities or individuals with whom VA has a contract or agreement to perform such services as VA may deem practicable for the purposes of laws administered by VA, in order for the contractor, subcontractor or entity or individual with whom VA has an agreement or contract to perform the services of the contract or agreement.

9. VA may disclose information or records to appropriate agencies, entities, and persons when (1) it is suspected or confirmed that the integrity or confidentiality of information in the system of records has been compromised; (2) VA has determined that as a result of the suspected or confirmed compromise there is a risk of embarrassment or harm to the reputations of the records' subjects, harm to economic or property interest, identity theft or fraud, or harm to the security, confidentiality or integrity of

this system or other systems or programs (whether maintained by VA or another agency or entity) that rely upon the potentially compromised information; and (3) the disclosure is made to such agencies, entities, and persons whom VA determines are reasonably necessary to assist in or carry out VA's efforts to respond to the suspected or confirmed compromise and prevent, minimize, or remedy such harm.

10. Disclosure to other Federal agencies may be made to assist such agencies in preventing and detecting possible fraud or abuse by individuals in their operations and programs. This routine use permits disclosures by VA to respond to a suspected or confirmed data breach, including the conduct of any risk analysis or provision or credit protection services as provided in 38 U.S.C. 5724, as the terms are defined in 38 U.S.C. 5727.

11. The record of an individual who is covered by a system of records may be disclosed to a Member of Congress, or a staff person acting for the member, when the member or staff person requests the record on behalf of and at the written request of the individual.

12. Disclosure may be made to the National Archives and Records Administration (NARA) or the General Services Administration (GSA) in records management inspections conducted under authority of Chapter 29 of Title 44 United States Code.

POLICIES AND PRACTICES FOR STORING, RETRIEVING, ACCESSING, RETAINING, AND DISPOSING OF RECORDS IN THE SYSTEM STORAGE:

STORAGE:

Records are transmitted between DMDC and VA over a dedicated telecommunications circuit using approved encryption technologies. Records (or information contained in records) are maintained in electronic format in the VADIR Oracle database. These records cannot be directly accessed by any VA employee or other users. Information from VADIR is disseminated in three ways: (1) Approved VA systems electronically request and receive data from VADIR, (2) data is provided between VADIR and DMDC for reconciliation of records or to identify retired veterans and dependents who have entitlements to DoD benefits but are not identified in DEERS, and (3) periodic electronic data extracts of subsets of information contained in VADIR are provided to approved VA offices/systems. Backups of VADIR data are created regularly and stored in a secure off-site facility.

RETRIEVABILITY:

Electronic files are retrieved using various unique identifiers belonging to the individual to whom the information pertains to include such identifiers as name, claim file number, social security number and date of birth.

SAFEGUARDS:

1. Physical Security: The primary VADIR system is located in the AAC and the backup disaster recovery system is located in the Hines Data Processing Center. Access to data processing centers is generally restricted to center employees, custodial personnel, Federal Protective Service and other security personnel. Access to computer rooms is restricted to authorized operational personnel through electronic locking devices. All other persons needing access to computer rooms are escorted.

2. System Security: Access to the VA network is protected by the usage of ''logon'' identifications and passwords. Once on the VA network, separate ID and password credentials are required to gain access to the VADIR server and/or database. Access to the server and/or database is granted to only a limited number of system administrators and database administrators. In addition VADIR has undergone certification and accreditation. Based on a risk assessment that followed National Institute of Standards and Technology Vulnerability and Threat Guidelines, the system is considered stable and operational and a final Authority to Operate has been granted. The system was found to be operationally secure, with very few exceptions or recommendations for change.

RETENTION AND DISPOSAL:

VA retains selected information for purposes of making eligibility determinations for VA benefits. The information retained may be included in the VA records that are maintained and disposed of in accordance with the appropriate record disposition authority approved by the Archivist of the United States.

SYSTEM MANAGER(S) AND ADDRESSES:

The official responsible for maintaining the VADIR repository: David Lindsey, Program Manager, VADIR, Registration and Eligibility, Office of Enterprise Development, Interagency Program Executive Office (005Q3), ATTN: VADIR System of Records, 810 Vermont Avenue, NW., Washington, DC 20420.

NOTIFICATION PROCEDURES:

Individuals seeking information on the existence and content of a record pertaining to them should contact the system manager, in writing, at the above address. Requests should contain the full name, address and telephone number of the individual making the inquiry.

RECORD ACCESS PROCEDURE:

(See notification procedure above.)

CONTESTING RECORD PROCEDURES:

See Notification Procedure above. Additionally, to the extent that information contested is identified as data provided by DMDC, which is part of the Defense Logistics Agency (DLA), the DLA rules for accessing records, for contesting contents, and appealing initial agency determinations are contained in 32 CFR Part 323, or may be obtained from the Privacy Act Officer, Headquarters, Defense Logistics Agency, ATTN: DES–B, 8725 John J. Kingman Road, Stop 6220, Fort Belvoir, VA 22060–6221.

RECORD SOURCE CATEGORIES:

Information in this system of records is provided by components of the Department of Defense.

[FR Doc. E9–17776 Filed 7–24–09; 8:45 am]

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Federal Register

Monday,
July 27, 2009

Part II

Department of Energy

Federal Energy Regulatory Commission

18 CFR Chapter I
Smart Grid Policy; Final Rule

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

18 CFR Chapter I

[Docket No. PL09–4–000]

Smart Grid Policy

Issued July 16, 2009.

AGENCY: Federal Energy Regulatory Commission.

ACTION: Policy statement.

SUMMARY: This Policy Statement provides guidance regarding the development of a smart grid for the nation's electric transmission system, focusing on the development of key standards to achieve interoperability and functionality of smart grid systems and devices. In response to the need for urgent action on potential challenges to the bulk-power system, in this Policy Statement the Commission provides additional guidance on standards to help to realize a smart grid. The Commission also adopts an Interim Rate Policy for the period until interoperability standards are adopted by the Commission, which will encourage investment in smart grid systems.

DATES: *Effective Date:* The Interim Rate Policy will become effective September 25, 2009.

FOR FURTHER INFORMATION CONTACT:

David Andrejcak, Office of Electric Reliability, 888 First Street, NE., Washington, DC 20426, (202) 502–6721, *david.andrejcak@ferc.gov.*

Elizabeth H. Arnold, Office of General Counsel, 888 First Street, NE., Washington, DC 20426, (202) 502–8818, *elizabeth.arnold@ferc.gov.*

Ray Palmer, Office of Energy Policy and Innovation, 888 First Street, NE., Washington, DC 20426, (202) 502–6569, *ray.palmer@ferc.gov.*

Dennis Reardon, Office of Energy Market Regulation, 888 First Street, NE., Washington, DC 20426, (202) 502–6719, *dennis.reardon@ferc.gov.*

SUPPLEMENTARY INFORMATION:

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Before Commissioners: Jon Wellinghoff, Chairman; Suedeen G. Kelly, Marc Spitzer, and Philip D. Moeller.

Policy Statement

Issued July 16, 2009.

1. On March 19, 2009, the Commission issued a Proposed Policy Statement and Action Plan to guide the development of key standards for smart grid devices and systems.[1] Many companies in the electricity industry are designing and deploying such devices and systems with the objective of achieving greater interoperability and functionality of the nation's electric transmission grid. In the Proposed Policy Statement, the Commission also put forth the notion of an interim rate policy to guide rate recovery while interoperability standards are adopted (Interim Rate Policy). Comments were invited on all aspects of the Proposed Policy Statement. On May 19, 2009, the Commission issued a notice requesting supplemental comments on one additional feature of the Interim Rate Policy.[2]

This Policy Statement generally adopts the proposals enumerated in the Proposed Policy Statement and provides additional guidance for standards that will help realize a smart grid.

I. Background

2. As the Commission explained in the Proposed Policy Statement, the Commission's jurisdiction over the transmission system derives from provisions of the Federal Power Act (FPA) relating to the transmission of electric energy in interstate commerce by public utilities, and to the reliable operation of the bulk-power system.[3] An additional responsibility was assigned by the Energy Independence and Security Act of 2007 (EISA)[4] directing the Commission to initiate a rulemaking proceeding to adopt standards and protocols related to smart grid functionality and interoperability.[5]

3. EISA lays out the policy of the United States with regard to modernization of the nation's electricity transmission and distribution system in order to maintain a reliable and secure electricity infrastructure that can meet future demand growth and achieve a

[1] *Smart Grid Policy,* 126 FERC ¶ 61,253 (2009) (Proposed Policy Statement).

[2] *Smart Grid Policy,* 127 FERC ¶ 61,139 (2009) (Notice Requesting Supplemental Comments).

[3] 16 U.S.C. 824, 824o (2006).

[4] Pub. L. 110–140, 121 Stat. 1492 (2007).

[5] EISA section 1305(d), to be codified at 15 U.S.C. 17385(d).

number of goals characterizing a smart grid.[6] EISA also directs the National Institute of Standards and Technology (the Institute) to coordinate the development of a framework to achieve interoperability of smart grid devices and systems, including protocols and model standards for information management.[7] The Commission explained in the Proposed Policy Statement that, in order to achieve the smart grid characteristics and functions described in EISA, interoperability of smart grid equipment will be essential.[8]

4. Once the Commission is satisfied that the Institute's work has led to ''sufficient consensus'' on interoperability standards, EISA directs the Commission to ''institute a rulemaking proceeding to adopt such standards and protocols as may be necessary to insure smart-grid functionality and interoperability in interstate transmission of electric power, and regional and wholesale electricity markets.'' [9] In the Proposed Policy Statement, the Commission described some of the Institute's efforts to date, as well as its projected work, to develop a framework for interoperability standards, and sought comment on the most effective and efficient ways for the Commission and the Institute to interact in the ongoing standards development processes.

5. In the Proposed Policy Statement, the Commission identified several potential challenges to the reliable operation of the Commission-jurisdictional bulk-power system and the smart grid functions and characteristics that could help address those challenges. The major challenges identified include: Existing cybersecurity issues [10]; issues associated with changes to the nation's generation mix,[11] including an increasing reliance on variable renewable generation resources;[12] and issues that could arise with increased and more variable electricity loads associated with transportation technology.[13] In addition to these challenges, we incorporated the Institute's assessment that there is an overarching need for standardization of communication and coordination across inter-system interfaces.[14]

6. In response to the need for urgent action on these potential challenges to the bulk-power system, the Commission identified and asked for comments on several areas it proposed as deserving high priority in the smart grid interoperability standards development process, including two cross-cutting issues (cybersecurity and physical security to protect equipment that can provide access to smart grid operations, and a common information framework), and four key grid functionalities (wide-area situational awareness, demand response, electric storage, and electric transportation). The Commission also proposed the Interim Rate Policy to encourage investment in smart grid technologies intended to address potential challenges to the bulk-power system through the advancement of efficiency, security, reliability, and interoperability. The Interim Rate Policy provides that smart grid investments that demonstrate system security and compliance with Commission-approved Reliability Standards,[15] the ability to be upgraded, and other specified criteria will be eligible for timely rate recovery and other rate treatments.

7. The May 19 Notice Requesting Supplemental Comments sought additional input regarding potential actions that the Commission could take to insure that public utilities may qualify for awards under certain Department of Energy funding programs related to jurisdictional facilities. On the same day of the issuance of our Proposed Policy Statement, the Department of Energy announced $2.4 billion for electric vehicle demonstration and deployment projects.[16] On April 18, the Department of Energy announced another $615 million for targeted demonstrations programs; one of three targets is ''utility-scale energy storage demonstrations.'' [17]

8. The Commission notes from its review of a recent report that the Institute is now using the Proposed Policy Statement to coordinate development of interoperability standards.[18]

II. Discussion

9. Approximately 70 sets of comments were submitted from a broad array of interested parties.[19] In general, commenters support the Proposed Policy Statement, including the establishment of key priorities [20]

[6] EISA section 1301, to be codified at 15 U.S.C. 17381. Among these goals and characteristics are deployment or realization of: Digital information and technology to improve reliability, security and efficiency; cybersecurity; distributed resources and generation; demand response; ''smart'' technologies for optimal grid operations and distribution automation; ''smart'' appliances; electricity storage; consumer information and control; and communication and interoperability standards.

[7] EISA section 1305(a), to be codified at 15 U.S.C. 17385(a). In this Policy Statement, we refer to the Institute's process as both the coordination and the development of standards. The Institute's primary function with regard to smart grid is to be a coordinator for the variety of smart grid standards development initiatives.

[8] Interoperability is described as exchanging meaningful information between two or more systems and achieving an agreed expectation for the response to the information exchange while maintaining reliability, accuracy, and security. *See* GridWise Architecture Council, Interoperability Path Forward Whitepaper, *http://www.gridwiseac.org/pdfs/interoperability_path_whitepaper_v1_0.pdf.*

[9] EISA section 1305(d).

[10] Proposed Policy Statement, 126 FERC ¶ 61,253 at P 13.

[11] On May 13, 2009, the Commission announced that it had commissioned the Lawrence Berkeley National Laboratory to use frequency response to help assess the potential for the reliable integration of wind and other renewable energy resources into the bulk-power system. The frequency study has three main objectives: (1) Determining if frequency response is an appropriate metric to assess the reliability effects of integrating renewables, (2) using the resulting metric to assess the reliability impact of various levels of renewables on the grid, and (3) identifying what further work and studies are necessary to quantify and mitigate any negative effects on reliability associated with the integration of renewables.

[12] Proposed Policy Statement, 126 FERC ¶ 61,253 at P 17–20.

[13] *Id.* P 21–22.

[14] National Institute of Standards and Technology, *Smart Grid Issues Summary (2009), http://collaborate.nist.gov/twiki-sggrid/pub/SmartGrid/TnD/Draft_NIST_Smart_Grid_Issues_Summary_10March2009.pdf*, at 1 and 4–5.

[15] Adopted under FPA section 215, 16 U.S.C. 824o.

[16] *See* March 19, 2009 Department of Energy news release, *President Obama Announces $2.4 Billion for Electric Vehicles, http://apps1.eere.energy.gov/news/daily.cfm/hp_news_id=159.* In this Policy Statement, ''electric vehicle'' refers to a vehicle that requires periodic re-charging of its propulsion battery from the electric grid; such a vehicle may or may not also be a ''hybrid,'' additionally capable of re-charging with a fuel-driven generator or by other mechanical means.

[17] *See* April 16, 2009 Department of Energy news release, Vice President Biden Outlines Funding for Smart Grid Initiatives, *http://www.energy.gov/news2009/7282.htm.*

[18] Don Von Dollen, *Report to NIST on the Smart Grid Interoperability Standards Roadmap,* Electric Power Research Institute (June 17, 2009) (Roadmap Report). See also Press Release, Electric Power Research Institute (June 17, 2009). For example, Chapter four reports on the collaborative work of the Institute, the contractor, and its subcontractors, and attendees at two conferences to develop use cases, interfaces, and requirements for the Commission's four key grid functionalities identified in the Proposed Policy Statement: Wide-area situational awareness, demand response, electric storage, and electric transportation. Two additional priority functionalities have also been identified that relate to those proposed by the Commission: AMI systems that relate to the need for metering standards are identified in the demand response discussion of the Roadmap Report and distribution grid management (related to distributed energy storage) is identified in both the electric storage and electric transportation discussions. In addition, Chapter five of the report is devoted to the cross-cutting issue of cybersecurity identified by the Commission. Chapter six addresses the Commission's second cross-cutting issue of a prioritized need for common semantic models and other standardized communication elements.

[19] An alphabetical listing of all commenters and abbreviations for each is found at the end of this document at Appendix A.

[20] An area considered to be a ''key priority'' is proposed as the first level of work to be

Continued

identified therein, and the need for focused leadership over the process going forward. There is a greater diversity of comments on the Interim Rate Policy. Sixteen supplemental comments were submitted, exhibiting a split of opinion regarding whether to offer special procedures for rate recovery filings for utilities seeking funding through certain Department of Energy programs.

10. In this Policy Statement, the Commission adopts the key priorities for standards development that were identified in the Proposed Policy Statement. The Commission also adopts the Interim Rate Policy, as discussed below, and finds that there is no need for special procedures associated with rate recovery filings for projects that are also receiving Department of Energy grant funding.

11. A number of entities also comment on the standards development process and the Commission's interactions with the Institute and other bodies interested in the development of interoperability standards. The Commission will address these topics separately.

A. Jurisdictional Concerns

12. In the Proposed Policy Statement, the Commission noted that its interest and authority in the area of smart grid derive from its authority over the rates, terms and conditions of transmission and wholesale sales in interstate commerce and its responsibility for Reliability Standards for the bulk-power system, as well as from EISA.[21] Specifically, the Commission has jurisdiction over the transmission of electric energy in interstate commerce by public utilities pursuant to FPA section 201, and over the reliable operation of the bulk-power system in most of the nation under FPA section 215.[22] Section 1305(d) of EISA directs the Commission to initiate rulemaking proceedings to adopt such standards and protocols as may be necessary to insure smart grid functionality and interoperability in interstate transmission of electric power, and in regional and wholesale electricity markets.[23]

Comments

13. Many commenters note a tension that the Proposed Policy Statement raises between Federal jurisdiction and State jurisdiction and urge the Commission to clarify jurisdictional boundaries. Questions center on both standards adoption and applicability and whether deployed technology will be subject to State or Federal rate authority.

14. A number of commenters maintain that EISA does not alter the fundamental parameters of the Commission's authority.[24] State commissions, other State authorities, and several utilities remark that the Commission should not encroach on traditional State jurisdiction.[25] The Michigan Commission maintains that implementing smart grid functionality and interoperability at the distribution level or in retail sales should be left to the states. Several entities are concerned by statements in the Proposed Policy Statement that, to those parties, indicate that the Commission may be extending its jurisdictional scope. In particular, commenters take issue with the suggestions that the potential reliability impacts of electric vehicles may afford the Commission some authority over distribution facilities, and certain devices related to the distribution system are eligible for cost recovery in wholesale rates because of some tangential impact on bulk-power operations due to interoperability issues.[26]

15. The Ohio Commission comments that, since interoperability standards encompass areas that are outside of the Commission's jurisdiction, the Commission should support the development of model standards through the Institute's process, resolving any impasses through the NARUC/FERC Smart Grid Collaborative, and that the Commission and states should adopt model standards to be applied within areas subject to their respective jurisdictions. In addition, states should be responsible for ensuring compliance with Commission-imposed guidelines and standards.[27]

16. The Ohio Commission and North Carolina Agencies note that not all states will want the same smart grid functionality deployed in the same manner, and comment that standards should accommodate different rate structures and policies. In contrast, NEMA and CURRENT appreciate national standardization, noting that the lack of a consistent national standard for interconnection has inhibited the development of distributed generation. NEMA and CURRENT urge the Commission to pursue nationwide standardization and encourage State commissions to develop policies akin to those in the Proposed Policy Statement. The Kansas Commission asks whether the Commission is suggesting that the Federal government should implement guidelines governing the procedures for charging electric vehicles at night as one method for storing electricity.[28]

17. Various commenters request clarification or guidance in certain areas, notably (1) whether the Commission intends to implement mandatory protocols ''in areas that are traditionally under State jurisdiction, such as the distribution network and behind-the-meter installations,'' [29] (2) how the Commission intends to determine which portions of a smart grid are part of the bulk-power system and those which are part of the distribution system,[30] (3) whether the Commission has the authority to specify physical layer standards [31] while preserving State ratemaking authority,[32] and (4) whether the Commission has the authority to mandate a nationwide meter communications protocol.[33]

18. Many commenters ask the Commission to clarify the boundaries between Federal and State jurisdiction for rate recovery purposes. NARUC suggests that the approach should be to examine the location of the deployed technology. If such a technology resides on a Commission-jurisdictional line, then it should be regulated by this Commission. If it resides on a line regulated by states, then it should be subject to State oversight.[34] EEI highlights the need for this clarification, noting that specific smart grid equipment might be installed on either or both transmission and distribution facilities.[35] Indianapolis P&L asserts that the Commission should apply the seven factor test, set forth in Order No.

accomplished in the interoperability standards-setting process. Proposed Policy Statement, 126 FERC ¶ 61,253 at P 27.

[21] *Id.* P 1.

[22] 16 U.S.C. 824, 824o.

[23] EISA section 1305(d), to be codified at 15 U.S.C. 17385(d).

[24] *See, e.g.,* Michigan Commission Comments at 6–7, Maryland Counsel Comments at 7–8, Ohio Commission Comments at 4, and Ohio Partners Comments at 2–3.

[25] *See, e.g.,* California Commission Comments at 6, Ohio Commission Comments at 5–7, Massachusetts Attorney General Comments at 4–5, and SDG&E Comments at 22–23.

[26] Michigan Commission Comments at 8 and Maryland Counsel Comments at 5.

[27] Ohio Commission Comments at 5–7.

[28] Kansas Commission Comments at 5–6.

[29] California Commission Comments at 6–7.

[30] *Id.* at 11.

[31] NEMA makes several references to physical connections and standards in its comments, including interconnection for distributed generation, and applications for intelligent customer energy management equipment. It is not clear in NEMA's comments whether this reference also applies to meters.

[32] NEMA Comments at 6.

[33] *Id.* at 7.

[34] NARUC Comments at 16, Maryland Counsel Comments at 5, and Springfield Comments at 10–11.

[35] EEI Comments at 14–15.

888,[36] to delineate between Federal and State activities.[37]

19. NARUC is also concerned that the Commission's policies not allow double cost recovery, or allow Commission-jurisdictional entities to ''bootstrap cost recovery for projects implemented within State jurisdiction.'' [38] The California Commission asserts that the Commission should acknowledge that State commissions are in the best position to address concerns as they pertain to retail customers and ratepayers.[39]

20. On the other hand, Ohio Commission states that cost recovery for the initial deployment of a demand response program should be at the State level. However, if such programs require later upgrading or replacement in order to meet model demand response standards approved by this Commission, then Ohio Commission argues that the associated costs should be recovered on a socialized, national level in Commission-jurisdictional rates.[40]

21. Finally, a number of entities encourage the Commission to work together with the states, and in particular with the NARUC/FERC Smart Grid Collaborative, to sort out jurisdictional boundaries. Maryland Counsel and Ohio Partners comment that ongoing dialogues should include consumer advocacy organizations.

Commission Determination

22. The Commission agrees with those commenters who state that EISA does not alter the FPA's jurisdictional boundaries between Federal and State regulation over the rates, terms, and conditions of transmission service and sales of electricity. EISA does not modify any of the provisions of the FPA. Nevertheless, EISA does give the Commission new responsibilities for the adoption of standards needed to insure smart grid functionality and interoperability. The legislation specifically directs the Commission to institute rulemaking proceedings to adopt standards necessary to insure ''functionality and interoperability in interstate transmission of electric power, and regional and wholesale electricity markets.'' [41] The Commission understands this mandate to mean that the Commission has the authority to adopt a standard that will be applicable to all electric power facilities and devices with smart grid features, including those at the local distribution level and those used directly by retail customers so long as the standard is necessary for the purpose just stated.[42] We reach this conclusion because Congress does not exclude from the scope of EISA 1305(d) facilities used in local distribution, or otherwise limit Commission authority to approve standards. Further, other provisions in EISA indicate that the smart grid interoperability framework is intended to include all elements of the grid, including communications with the ultimate consumer.[43] EISA does not identify any segment of the interoperability framework that is not within the scope of standards to be promulgated. Accordingly, the Commission finds that EISA grants the Commission the authority to adopt smart grid standards—such as meter communications protocols or standards—that affect all facilities, including those that relate to distribution facilities and devices deployed at the distribution level, if the Commission finds that such standards are necessary for smart grid functionality and interoperability in interstate transmission of electric power, and in regional and wholesale electricity markets.

23. EISA, however, does not make any standards mandatory and does not give the Commission authority to make or enforce any such standards. Under current law, the Commission's authority, if any, to make smart grid standards mandatory must derive from the FPA. Similarly, its authority to allow rate recovery of smart grid costs must derive from the FPA. The authority to adopt standards under EISA does not change the scope of the Commission's ratemaking or reliability jurisdiction, as many commenters note.

24. In order to determine whether particular facilities are subject to State or Federal jurisdiction for purposes of rate recovery, interested parties should refer to Commission precedent for guidance.[44] The Commission will evaluate particular facilities and projects on a case-by-case basis. In response to commenters' concerns, we recognize that it would be inappropriate for a utility to recover the same costs for a smart grid project twice, through State-approved retail rates and again in a proceeding before this Commission.

25. As the EISA mandate to adopt interoperability standards does not afford the Commission new economic regulatory authority over local distribution facilities themselves,[45] and does not provide any authority or directive to mandate standards, the Commission does not interpret EISA to allow it to direct states to implement any particular retail customer policies or programs. To the extent the Commission does adopt smart grid standards related to facilities outside the Commission's jurisdiction under the FPA, we agree with the Ohio Commission that states can insure compliance with any standards they deem applicable to their jurisdictions.

26. In response to the question posed by the Kansas Commission regarding whether the Federal government should have guidelines governing the procedures for charging electric vehicles at night as one method for storing electricity, the Commission does not intend to issue policy guidelines for storing electric power by charging electric vehicles during off-peak load periods. Nevertheless, if the Institute's process results in a smart grid interoperability standard related to storing electric power by charging electric vehicles, the Commission would consider adoption of such a standard pursuant to EISA section 1305(d).

27. The Commission recognizes that states have an interest in the

[36] *Promoting Wholesale Competition Through Open Access Non-Discriminatory Transmission Services by Public Utilities; Recovery of Stranded Costs by Public Utilities and Transmitting Utilities*, Order No. 888, FERC Stats. & Regs. ¶ 31,036, at 31,771 and 31,981 (1996), *order on reh'g*, Order No. 888–A, FERC Stats. & Regs. ¶ 31,048, *order on reh'g*, Order No. 888–B, 81 FERC ¶ 61,248 (1997), *order on reh'g*, Order No. 888–C, 82 FERC ¶ 61,046 (1998), *aff'd in relevant part sub nom. Transmission Access Policy Study Group* v. *FERC*, 225 F.3d 667 (D.C. Cir. 2000), *aff'd sub nom. New York* v. *FERC*, 535 U.S. 1 (2002).

[37] Indianapolis P&L Comments at 5–6.

[38] NARUC Comments at 13.

[39] California Commission Comments at 4, 12.

[40] Ohio Commission Comments at 1, 10.

[41] EISA section 1301 and section 1305(d).

[42] For example, two-way communications are a distinguishing characteristic of smart grid devices on both the transmission and distribution systems. This two-way communications capability is essential to the smart grid vision of interoperability, allowing the transmission and distribution systems to communicate with each other. They also affect the security and functionality of each other.

[43] *See, e.g., EISA* section 1301 and section 1305(a) (stating that the framework should ''enable all electric resources, including demand-side resources, to contribute to an efficient, reliable electricity network'') and section 1305(b).

[44] *See, e.g., Detroit Edison Co.*, 95 FERC ¶ 61,415 (2001), *order on reh'g*, 96 FERC ¶ 61,309 (2001). ''[T]o the extent that any facilities, regardless of their original nominal classification, in fact, prove to be used by public utilities to provide transmission service in interstate commerce in order to deliver power and energy to wholesale purchasers, such facilities are subject to this Commission's jurisdiction and review.'' *Id.*, 95 FERC ¶ 61,415, at 62,535. *Accord, Northeast Utilities Service Co.*, 107 FERC ¶ 61,246, at P 22 (2004).

[45] Similarly, the Commission's previous actions approving proposed North American Electric Reliability Corporation (NERC) reliability standards applicable to distribution providers and load serving entities to maintain the reliability and integrity of the bulk-power system did not, in and of themselves, confer Commission rate jurisdiction over those entities' local distribution facilities.

functionalities of smart grid technologies, as suggested by North Carolina Agencies and the Ohio Commission, and we encourage states to actively participate in the ongoing discussions being organized and facilitated by the Institute to insure that their perspectives are represented. We do not believe that Commission adoption of national standards for smart grid technologies should interfere with a State's ability to adopt whatever advanced metering or demand response program it chooses. Nor will Commission adoption of national standards affect the existing statutory framework for wholesale and retail pricing. Interoperability standards should be designed flexibly enough to support alternative programs and pricing policies being considered by a particular State. Indeed, national standards adopted by the Commission should enhance, not limit, the policy choices available to each State.

28. We believe that it is appropriate for the Commission to have a role in determining key priorities in the interoperability standards development process. The Commission's leadership in this arena will help to expedite the development of functionalities that are important to Federal energy policy (*e.g.*, wide-area situational awareness to improve the reliability of the transmission grid) as well as to support programs that have emerged in many states (*e.g.*, integrating renewable generation to permit utilities to meet State-mandated renewable portfolio requirements). We see great benefit from collaborating closely with states regarding flexibility in smart grid standards and adapting to new technologies, and we expect to work with the states to pursue these topics through the NARUC/FERC Smart Grid Collaborative.

B. Development of Key Standards

29. The purpose of this Policy Statement, among other things, is to prioritize the development of key interoperability standards to provide a foundation for the development of many other standards. The Proposed Policy Statement identified and requested comment on several key priorities the Commission believed were necessary to address existing and emerging challenges to the operation of the bulk-power system. These challenges included existing cybersecurity issues, large-scale changes in generation mix and capabilities, and large potential new load from electric vehicles. The proposed key priorities for standards development included two cross-cutting issues, system security and inter-system communication, and four key grid functionalities: (1) Wide-area situational awareness, (2) demand response, (3) electric storage, and (4) electric transportation.[46] Each of these topics is discussed in detail in the following sections. The Commission urges the Institute and interested parties to continue to focus their efforts on these key priorities first in order to achieve interoperability in a timely manner.

1. System Security

30. As explained below, the Commission adopts its Proposed Policy Statement position that cybersecurity is essential to the operation of the smart grid and that the development of cybersecurity standards is a key priority. Cybersecurity and physical security are ongoing concerns for both the Commission and the electricity industry and have received heightened attention as part of the creation of recent mandatory and enforceable Federal standards. We believe that implementation of smart grid technology, which is designed to improve communication, coordination, and interoperability, will require added attention to cybersecurity standards.

31. To date, eight mandatory cybersecurity and physical critical infrastructure protection Reliability Standards (CIPS) have been approved by the Commission pursuant to section 215 of the FPA. The fact that a smart grid would permit two-way communication between the traditionally regulated components of the electric system and a large number of smart grid devices expected to be located beyond the conventional boundaries of regulated entities suggests that cybersecurity standards require special attention.

32. The Commission sought comment regarding whether cybersecurity should be considered a cross-cutting issue affecting interoperability that must be included in smart grid standards.[47] The Commission also proposed harmonizing cybersecurity and Reliability Standards as a precondition to the adoption of smart grid standards. The Commission further proposed to advise the Institute to undertake the necessary steps to assure that each standard and protocol that is developed as part of the Institute's interoperability framework is consistent with the overarching cybersecurity and reliability mandates of the EISA as well as existing Reliability Standards approved by the Commission pursuant to section 215 of the FPA.

Comments

33. Many commenters support system security as a priority.[48] For instance, APPA states that security-related concerns should be given the highest priority and that they should be harmonized with the NERC CIPS standards to avoid conflicts during the large-scale deployment of smart grid installations, while ITC Companies assert that cybersecurity is of paramount importance for the development of a smart grid.[49] ELCON recommends that the Commission use a ''measured approach to smart grid deployment'' so that relevant agencies and standards development organizations have time to overcome cybersecurity related technical issues.[50]

34. Some entities are concerned about whether there will be sufficient coordination among the Institute and other relevant Federal and State agencies, and whether there will be a broader application of Federal Reliability Standards on distribution facilities.[51] While several entities state that an open connectivity protocol should be developed through the Institute's standards coordination process to insure interoperability of cyber-secure smart grid components, some also support its development through a Commission-approved Reliability Standard. Other entities assert that secure protocols already exist and are available for adoption.[52]

35. On the matter of coordination with the Institute, EEI points out that cybersecurity should be addressed early on in the development and manufacturing process and that smart grid products should undergo thorough interoperability and cybersecurity testing and certification at all levels prior to installation and use by independent firms that have been accredited by the Institute.[53] NERC agrees that cybersecurity for smart grid technologies should be a top priority and advocates close coordination with the Institute to avoid jurisdictional overlaps. NERC recommends adoption of Commission policies to encourage the Institute to use its role, as the smart grid

[46] Proposed Policy Statement, 126 FERC ¶ 61,253 at P 28.

[47] *Id.* P 12.

[48] NARUC Comments at 14, EEI Comments at 6, 11, NERC Comments at 10, and ITC Comments at 6.

[49] APPA Comments at 12 and ITC Companies Comments at 5–6.

[50] ELCON Comments at 2.

[51] Michigan Commission Comments at 5–6, GridWise Alliance Comments at 9–10, and National Grid Comments at 4.

[52] ITC Companies Comments at 5–6 and PSEG Comments at 6–8.

[53] EEI Comments at 7.

standards proponent and coordinator, to build cybersecurity protections into standards that affect the full span of smart grid systems and devices, such as the distribution system, utilities' business systems, customer appliances, and information technology systems, with an eye towards aggregated impacts on the bulk-power system.[54]

36. The Michigan Commission counsels that the Commission should avoid being overly prescriptive in its standards until the Institute's process is complete and should undertake a ''bottom up'' collaborative process that includes the States, standards development organizations and other private actors to identify, up front, the reliability and security considerations that smart grid technologies must address while respecting the traditional statutory distinctions between state and Federal jurisdiction over electricity.[55] NERC warns that the possible aggregate effects of smart grid devices that reach into the distribution system can have substantial impact on the security of the bulk-power system.[56]

37. With respect to sufficient specificity in the Proposed Policy Statement, CPower asserts that the Commission's objective should be to bar only significant gaps in cybersecurity.[57] ELCON suggests that more consistency and standardization are required with respect to authentication standards, physical protection standards, and the impact to the bulk-power system. GWAC argues that the Proposed Policy Statement should be expanded to address system architectures, define the classes of security requirements, and include risk management aspects, such as costs and potential consequences, instead of directing policy towards low-level details.[58] B–D Research contends that the definition of cybersecurity must be expanded to include matters such as (1) non-disruptive events, (2) unauthorized access to, or modification of, a critical system, (3) information leakage, and (4) system compromise.[59] E.ON offers that existing cybersecurity standards should not serve as constraints on the adoption of improved and potentially more secure technologies.[60]

38. The Ohio Commission requests that the Commission clarify its neutrality towards specific configurations and/or technology and that the common information model should not be too formulaic and thereby provide easy opportunities to defeat the cybersecurity standards.[61] The California Commission suggests that standards should protect the grid from inadvertent and direct cyber attacks while approved technologies should have the ability to: (1) Withstand direct cyber attacks, (2) maintain resiliency in times of extreme stress and congestion, and (3) automatically (or intelligently) respond to adverse system conditions as they occur.[62]

39. On the matter of Commission-approved Reliability Standards, Southern contends that the Commission should confirm that smart grid installations do not automatically create mandatory Reliability Standard compliance obligations and that they do not automatically constitute critical cyber assets. In its view, smart grid technologies and applications should be considered critical cyber assets only when they would be designated as such under the requirements of Commission-approved CIPS Reliability Standard CIP–002.[63] NRECA suggests that a number of NERC Reliability Standards may need to be developed or revised concurrently with the implementation of smart grid technology.

Commission Determination

40. The Commission adopts its proposed policy position that the development of cybersecurity standards is a key priority in protecting the electricity grid. The possibility that an adversary could access any of potentially millions of smart grid devices and use this access to disrupt the proper functioning of the bulk-power system creates new challenges for the operation of the nation's electricity grid. These challenges are a natural consequence of the extensive communications network comprising the smart grid. Because cybersecurity becomes a concern whenever one system communicates with another, it is important to focus from the outset on cybersecurity as an essential feature of the design of interoperability standards. There is strong support for this focus from the commenters.

41. Accordingly, consistent with our cybersecurity mandates under EISA, the Commission will require a demonstration of sufficient cybersecurity protections in proposed smart grid standards to be considered in a rulemaking proceeding under EISA, including, where appropriate, a proposed smart grid standard applicable to local distribution-related components of smart grid. Specifically, there must be a demonstration that a proposed smart grid standard: (1) Directly incorporates cybersecurity protection provisions, or (2) incorporates cybersecurity protection provisions from other smart grid standards or electric Reliability Standards that are submitted to the Commission concurrently, are already pending before the Commission, or have previously been adopted or approved by the Commission under EISA or section 215 of the FPA, respectively, provide cybersecurity protection for the electric power system for the proposed standard.

42. The Commission does not intend to preempt the development and implementation of an interoperability smart grid framework with the prioritization of cybersecurity and physical security. On the contrary, given our reliability and security oversight mandates under EISA and FPA section 215, we are attempting to promote and accelerate development and implementation of cybersecurity elements that are foundational to the smart grid, and which will also promote maintenance of the integrity and reliability of the underlying bulk-power system. Clearly, interoperability standards must support, and not conflict with, critical efforts to improve the cybersecurity of electric power systems.

43. As noted, many of the commenters request collaboration between the Institute and NERC on the development of smart grid standards. The Commission agrees with this approach and encourages NERC, as the Electric Reliability Organization certified by the Commission pursuant to FPA section 215, along with the states and other Federal agencies, to collaborate with the Institute in developing its interoperability framework. We expect that NERC will monitor the compatibility of the smart grid standards with the Commission-approved CIPS standards and help identify any gaps or inconsistencies that are left unaddressed. To the extent necessary, the Commission would direct NERC to submit to the Commission a new or modified Reliability Standard as necessary or appropriate to carry out the Commission's responsibilities under section 215 of the FPA as they relate to the development of smart grid standards.

44. On the matter of Commission jurisdiction over standards, the Commission notes, as discussed above, that the cybersecurity characteristic of the smart grid is statutorily specified under EISA. In EISA, Congress

[54] NERC Comments at 11–12.

[55] Michigan Commission Comments at 5–6.

[56] *Id.* at 11–12, 15.

[57] CPower Comments at 3.

[58] GWAC Comments at 13–15, 29–31.

[59] B–D Research Comments at 1–4.

[60] E.ON Comments at 4–6.

[61] Ohio Commission Comments at 11–12.

[62] California Commission Comments at 7.

[63] Southern Comments at 8–9.

envisions a smart grid with cybersecurity as a foundational element of its system and provided for cybersecurity throughout the statute.[64] Thus the Commission agrees with commenters such as NERC and CAISO that the reliability of the bulk-power system hinges on insuring the cybersecurity of all interconnections, including distribution system interconnections, to the extent allowed by EISA.

45. With respect to comments regarding the level of specificity in the cybersecurity requirements, constraints on improvements, and system resiliency and responsiveness to attacks, the Commission agrees that these concerns warrant the attention of the Institute, NERC, and others who are working on proposed smart grid cybersecurity issues. The Commission appreciates that the Roadmap Report highlights several relevant cybersecurity requirements, including those required in the Commission-approved CIPS standards.[65] The Commission takes no position here regarding specific technologies and technical configurations that are appropriate for particular smart grid standards. Finally, we agree that deploying smart grid technologies does not, in and of itself, result in the need for compliance with Reliability Standards. Compliance with Reliability Standards is determined through other processes under FPA 215, such as the NERC compliance registration process and the specific requirements of Commission-approved Reliability Standards.

2. Communication and Coordination Across Inter-System Interfaces

46. The Proposed Policy Statement suggested making the development of standards for inter-system interfaces a key priority. It described the issue as follows:

> The second cross-cutting issue is the need for a common semantic framework (*i.e.,* agreement as to meaning) and software models for enabling effective communication and coordination across inter-system interfaces. An interface is a point where two systems need to exchange data with each other; effective communication and coordination occurs when each of the systems understands and can respond to the data provided by the other system, even if the internal workings of each system are quite different.[66]

47. The Commission stated that IEC Standards 61970 and 61968 (together, Common Information Model), along with IEC 61850 (Communications Networks and Systems in Substations), could provide a basis for addressing this issue.[67] We clarified that we were not proposing any Commission requirement that these standards be developed further, but were identifying them for comment on whether these standards should be considered as important elements in efforts to realize significant early benefits of the smart grid.[68]

Comments

48. Many commenters agree on the need for effective communication and coordination across inter-system interfaces,[69] as well as using the Common Information Model standards as a starting place. Starting with Common Information Model standards was mentioned positively by GWAC, National Grid, NRG, Kansas Commission, Midwest ISO, and CAISO. However, some commenters caution that the premature implementation of standards for common information models for inter-system interfaces might result in valuable existing information systems being deemed inconsistent, requiring unnecessary replacement. They suggest a gradual phasing in of new technologies as other systems are retired.[70] NERC, on the other hand, contends that development of inter-system interfaces is one method whereby new and legacy control systems can be enabled to communicate with each other, which should extend the life of such legacy systems.[71]

49. Silver Spring Networks suggests that the Commission also include networking as a priority in smart grid standards development.[72] Silver Spring Networks and AT&T also strongly support the use of Internet Protocol as a networking standard.[73]

50. Regional transmission organizations that submitted comments support the Commission's proposals and offer some suggestions. CAISO suggests that communication across inter-system interfaces would be essential for ''deep-area situational awareness'' and for demand response.[74] NYISO suggests that regional transmission organizations (RTOs) and independent system operators (ISOs) should take a prominent role in the development of inter-system interface definitions and data communication protocols.[75]

Commission Determination

51. The Commission adopts the proposed policy position that the development of standards for communicating and coordinating across inter-system interfaces is a key priority cross-cutting issue. We agree with GWAC that the smart grid is essentially a ''system of systems'' and that standardized communications across the interfaces of these systems is a critical enabler of smart grid functionality and interoperability. The Commission recognizes that development of a common semantic framework and software models for enabling effective communication and coordination across the inter-system interfaces is critical to supporting virtually all of the smart grid goals, such as system self-healing, integration of diversified resources, and improved system efficiency and reliability. We note that the Institute's interoperability standards development process has already paid a substantial amount of attention to this topic. The Institute's preliminary list of sixteen standards [76] identified for the smart grid framework includes IEC 61968/61970 and IEC 61850, which had been suggested by the Commission as part of a starting point for communication across interfaces.[77] The Roadmap Report document indicates that much of the ongoing work in the Institute's process will center on developing common semantic and information models.[78]

52. The Commission agrees with the Kansas Commission that the standards development process to enable communications and coordination across inter-system interfaces should not cause premature dismantling of utility and RTO systems that currently function well. Older software systems should be able to continue in service during a transition period by using translators or bridges of reasonable cost that enable the outputs of such systems to be understood by newer higher functionality systems.

53. We agree with NYISO's suggestion that RTOs and ISOs should take a prominent role in defining system

[64] *See* EISA section 1301(2).

[65] *See* Roadmap Report at 7.

[66] Proposed Policy Statement, 126 FERC ¶ 61,253 at P 32.

[67] *Id.*

[68] *Id.* P 33.

[69] GWAC Comments at 16, Kansas Commission Comments at 3, Duke Comments at 8, NEMA Comments at 5, Midwest ISO Comments at 3, CAISO Comments at 7, ISO–NE Comments at 2, NRECA Comments at 17, NRG Comments at 7, National Grid Comments at 2, GridWise Alliance Comments at 1, and NERC Comments at 12.

[70] Kansas Commission Comments at 3 and SDG&E Comments at 19–20.

[71] NERC Comments at 12.

[72] Silver Spring Networks Comments at 1.

[73] *Id.* at 3; AT&T Comments at 3.

[74] CAISO Comments at 7.

[75] NYISO Comments at 5.

[76] *See Initial List of Smart Grid Interoperability Standards, Request for Comments,* 74 FR 27288 (June 9, 2009).

[77] *See* Proposed Policy Statement, 126 FERC ¶ 61,253 at P 33.

[78] Roadmap Report at 90.

interfaces, and we encourage ISOs, RTOs and all other FERC-jurisdictional utilities to engage in the Institute's standards development process.

54. With regard to networking standards and the potential use of Internet Protocol, the Commission will consider the findings of the Institute's standards development process in our rulemaking process.

3. Wide-Area Situational Awareness

55. In the Proposed Policy Statement, the Commission placed emphasis on wide-area situational awareness as another key priority for the smart grid. Wide-area situational awareness is the visual display of interconnection-wide system conditions in near real time at the reliability coordinator level and above. The implementation of wide-area situational awareness could help mitigate the effect of reliability events by giving reliability entities an improved and manageable high-level view of system conditions and parameters.

56. Furthermore, the Commission identified increased deployment of advanced sensors like Phasor Measurement Units as a tool to give bulk-power system operators access to large volumes of high-quality information about the actual state of the electric system. This functionality could help a smart grid address transmission congestion and system optimization. The Commission acknowledged that this technology would present its own set of challenges in the form of information processing and management and suggested that the Institute should strive to identify the necessary advanced software and systems that would be most useful to system operators in addressing transmission congestion and reliability.[79] The Commission recognized the efforts undertaken by the North American SynchroPhasor Initiative and encouraged RTOs to take a leadership role in coordinating such work with the member transmission owners.[80]

Comments

57. Commenters generally support the proposition that wide-area situational awareness should be a key priority in the development of Smart Grid interoperability standards. Many commenters agree with the Proposed Policy Statement that advanced sensors like Phasor Measurement Units will give bulk-power system operators access to large volumes of high-quality information about the system.[81] Furthermore, commenters agree with the Commission that accessing that level of information will require the development of advanced software and systems. Various commenters note that further investigation regarding additional features for Phasor Measurement Units is required. Furthermore, using high quality information about the actual state of the system to possibly switch from the current static transmission line rating system to a dynamic transmission line rating system would require more research.[82] NERC, for example, notes that although there might be additional uses for Phasor Measurement Units, their primary use should be to improve and protect the reliability of the bulk-power system.

58. Commenters agree with the Commission that coordination between RTOs and the North American SynchroPhasor Initiative will play a key role in the development of synchrophasor initiatives.[83] Furthermore, commenters agree that the Institute should identify the core requirements for advanced software and systems that will gather large volumes of data and present it in a useful manner to operators. However, NERC states that such efforts have been underway for several years under the guidance of the Department of Energy's visualization and controls research and development program with contributions from TVA, Bonneville Power Administration, and CAISO.[84] NERC believes that since these entities are already engaged on these issues, they, and not the Institute, should be in charge of designing and implementing the core requirements for software and hardware systems.

59. AWEA notes that hardware and software tools that will serve to integrate wind should be considered vital smart grid technology. For example, AWEA states that devices that will contribute to consolidating balancing authorities, tools for faster-interval/dispatch scheduling, and tools to better forecast wind energy should be considered smart grid technology.[85]

60. Duke seeks clarification on the Proposed Policy Statement's definition of wide-area situational awareness as ''the visual display of interconnection-wide system conditions in near real time at the reliability coordinator level and above.'' [86] Duke believes that wide-area situational awareness should be the responsibility of all NERC-defined functional reliability entities, such as balancing authorities, transmission operators, and so forth, and not just limited to the reliability coordinator level and above. Furthermore, Duke states that ''if the result of the Commission's term 'reliability coordinator and above' is that Duke Energy would be required to provide to other parties information or data that is not Duke Energy specific (*i.e.,* information that pertains to other regional entities), this is of concern, and would require new information-sharing and disclosure protocols.'' [87]

Commission Determination

61. The Commission adopts its proposed policy position that wide-area situational awareness should be a key priority for the standards development process. Wide-area situational awareness is imperative for enhancing reliability of the bulk-power system because it allows for greater knowledge of the current state of available resources, load requirements, and transmission capabilities. Increased situational awareness could allow for additional system automation and quicker reaction times to various reliability events. Given this concern about the need for increased situational awareness, and in response to Duke's request for clarification that the Commission's description of wide-area situational awareness in the Proposed Policy Statement was not intended to limit such responsibility to reliability coordinators only, we clarify that this was not our intent.

62. Regarding the development of wide-area situational awareness standards, the Commission agrees with NERC that it would be reasonable for the Institute to consider work done by the Department of Energy and others as the Institute develops standards.

4. Demand Response

63. In the Proposed Policy Statement, the Commission stated that smart grid-enabled demand response is a key priority for standards development because of its potential to help address several bulk-power system challenges including reliably integrating unprecedented amounts of variable generation resources into the electric grid. The Commission stated that the

[79] Proposed Policy Statement at P 36.

[80] *Id.* P 35.

[81] *See, e.g.,* Kansas Commission Comments at 4–5, Gridwise Alliance Comments at 11, and Duke Comments at 11.

[82] *See, e.g.,* Kansas Commission Comments at 4–5, Gridwise Alliance Comments at 11, Open Secure Systems Comments at 4, NERC Comments at 17, and American Transmission Comments at 8.

[83] *See, e.g.,* CAISO Comments at 9–10, Gridwise Alliance Comments at 11, and Midwest ISO Comments at 4.

[84] NERC Comments at 18.

[85] AWEA Comments at 7–11.

[86] Duke Comments at 10.

[87] *Id.* at 11.

further development of key standards should enhance interoperability and communications between system operators, demand response resources, and the systems that support them.[88]

64. The Commission proposed the development of a series of demand response use cases [89] employing readily available tools in order to achieve an appropriate level of standardization. The Commission encouraged a particular focus on use cases for the key demand response activities of dispatchable demand response load reductions to address loss or unavailability of variable resources, and the potential for dispatchable demand response to increase power consumption during over-generation situations.

65. The Commission noted that considerable work has been done to develop demand response standards (*e.g.,* Open Automated Demand Response) and further encouraged a focus on additional standardization of the interfaces between systems on the customer premises and utility systems, including addressing data confidentiality issues.

66. The Commission encouraged the Institute and industry to work together on further standards development, starting with the Institute's suggestion of the harmonization of IEC standard 61850 and several meter standards, namely ANSI C12.19 and C12.22. Finally, the Commission requested comment from states and other parties on the optimal approach to develop standards in the area of customer meters, and stated that the Commission will pursue direct communications with the states on this topic.

Comments

67. Most comments recognize the importance of demand response for helping to address the types of challenges listed in the Proposed Policy Statement.[90] NARUC supports working with the Commission to further develop and expand demand response programs.[91] That said, NARUC and others stress the need to remember that demand response, and the metering and retail pricing reforms that might be needed to fully realize demand response's potential, require retail customer involvement and are thus firmly State-jurisdictional matters.[92]

68. NARUC also emphasizes that demand response programs can and have operated without smart grid capabilities.[93] On the other hand, there were several comments stressing the importance to demand response of national standardization of certain supporting technologies, like communication between customer equipment and utility systems and national metering standards.[94] These commenters state that the development of metering standards at a national level would be helpful to increase the use of the smart grid by demand response resources and avoid implementing multiple, proprietary, non-compatible metering standards across the country that raise the cost of doing business in different markets.

69. Another key issue for commenters involves the need to develop measurement and verification standards for demand response. The demand response aggregation industry believes that standards will open up new markets for demand response (*e.g.,* capacity or ancillary services markets) and will leverage and enable demand response integration to address variable generation needs.[95] In addition, American Transmission states that specific, concrete requirements will be key to ensuring that committed demand response is available when needed allowing utilities to reliably include demand response capabilities in their transmission planning.[96]

70. Several commenters focus on the Proposed Policy Statement's discussion of dispatchable demand response, though their comments tend to reflect different viewpoints.[97] GWAC seems to interpret this discussion as imposing demand response on some group of customers that might be given no option but to respond to dispatch signals from system operators regardless of whether they are able to or want to participate.[98] GWAC prefers voluntary response to dynamic pricing signals. In contrast, some commenters support a focus on voluntary dispatchable demand response programs.[99] Black Hills Corporation expresses concern with the additional investment required for ''time sensitive'' rates for retail customers since ratepayers are already paying higher rates due to recovery mechanisms for efficiency, renewable portfolio, and carbon reduction standards in various states.[100]

71. Those commenters who speak to the issue seem to support the focus on developing demand response use cases as a first step toward interoperability standards.[101] In a similar vein, some stress the need to identify and support valuable opportunities for the use of demand response; for example, to provide ancillary services.

72. There are also comments stressing the importance to demand response of providing appropriate access to information gathered from advanced meters.[102] However, NARUC also touches upon this topic in discussing data confidentiality and other such issues. It emphasizes that these issues are firmly within the jurisdiction of State commissions and that a rulemaking targeting standards connected to the customer premises will exceed the Commission's jurisdiction.[103]

73. Wal-Mart argues that any environmental attributes (*e.g.,* carbon reduction allowances) associated with demand response equipment should be retained by the customer in order to foster customer participation and purchase of such equipment.[104]

Commission Determination

74. The Commission adopts its proposed policy position that the development of standards for demand response is a key priority. We agree with ELCON that smart grid technologies have considerable potential to promote demand response, which can reduce wholesale prices and wholesale price volatility and reduce potential generator market power. We also agree with NERC that smart grid capability can enhance the application of demand response to accommodate the integration of variable generation. As NYISO also points out, demand response resources play an

[88] *See* Proposed Policy Statement, 126 FERC ¶ 61,253 at P 37–39.

[89] As noted in the Proposed Policy Statement, the use case approach is a concept from the software and systems engineering communities whereby a developer, usually in concert with the end user, attempts to identify all of the functional requirements of a system. Each use case essentially describes how a user will interact with a system of other actors and objects to achieve a specific goal. The use case will identify the interfaces between different elements and the information being exchanged.

[90] *See, e.g.,* NYISO Comments at 10, ISO–NE Comments at 4, and ELCON Comments at 4–5.

[91] NARUC Comments at 8.

[92] *See, e.g.,* NARUC Comments at 6–8, Ohio Commission Comments at 7, Kansas Commission Comments at 5, and Wal-Mart Comments at 5.

[93] NARUC Comments at 8.

[94] *See, e.g.,* NEM and Intelligent Energy Comments at 8 and Wal-Mart Comments at 3–4.

[95] *See, e.g.,* Comverge Comments at 1–2 and DRSG Coalition Comments at 7–8.

[96] American Transmission Comments at 6.

[97] As discussed in the Proposed Policy Statement, ''dispatchable'' demand response allows participants to adjust their demand at the direction of a system operator. Proposed Policy Statement, 126 FERC ¶ 61,253 at P 20.

[98] GWAC Comments at 4.

[99] *See, e.g.,* Kansas Commission Comments at 4–5 and Black Hills Corp. Comments at 3.

[100] Black Hills Corp. Comments at 3.

[101] *See, e.g.,* NYISO Comments at 10, Alcoa Comments at 5–6, and CAISO Comments at 12.

[102] NEMA and Intelligent Energy Comments at 2, 4.

[103] NARUC Comments at 9.

[104] Wal-Mart at 5.

important role in maintaining system security, especially in constrained areas. Moreover, demand response can be particularly helpful in situations when production from variable generating resources has fallen. We note that the Institute has identified demand response as a key priority focus in its interoperability standards development process.

75. In order to achieve appropriate demand response standards, the Commission also adopts its proposed policy position that emphasis should be put on further development of use cases and scenarios for demand response, particularly with regard to dispatchable demand response and various forms of dynamic pricing. We agree with comments by Alcoa and Wal-Mart recommending that the dispatchable demand response interoperability standards effort should support the full range of customer types from large industrial customers through commercial and smaller residential customers. Furthermore, we expect that a standard for a dispatchable demand response program would support either a mandatory or voluntary program, as determined by the utility or retail regulator. With regard to dynamic pricing, the Commission agrees with GWAC that it is important to develop standards that support dynamic pricing, which offers an efficient means and incentive for large numbers of smaller customers to take appropriate demand response actions. We clarify that it is not our intention to require the use of dynamic pricing in retail rates. It is, important, however, for utilities and states that choose this option to develop standard pricing terminology and methods for communicating pricing information.[105]

76. The Commission notes that the early stages of the Institute's interoperability standards development process included investigation of standards for advanced metering systems. The Commission suggested in the Proposed Policy Statement that the development of national interoperability standards for meters may be appropriate.[106] Such standards could also lead to more communications among systems as well as facilitate the transfer of a successful program to other systems. National interoperability standards for meters should enable the use of direct load control, dynamic pricing, current tariff pricing or other program options that are approved by retail regulators. We stress, however, that the development of national interoperability standards for meters does not create an obligation for states or utilities to use them or to offer any specific type of demand response program. The Commission continues to recognize that State and local regulators have jurisdiction over retail rates and cost recovery. Recovery of retail jurisdictional costs will continue to be determined by State and local regulators. The Commission will continue to pursue direct communications with the states and other parties on the optimal approach to develop interoperability standards in the area of customer meters. It is with these understandings that we encourage the Institute and its industry collaborators to continue investigating potential national interoperability standards for meters.

77. Several commenters state the importance of developing measurement and verification standards for demand response. We agree. However, the Commission need not further address this topic because participants in several forums are doing so, including the North American Energy Standards Board and in compliance filings before the Commission resulting from Order No. 719.[107] Finally, the Commission finds that Wal-Mart's request that any environmental attributes (*e.g.,* carbon reduction allowances) associated with demand response equipment should be retained by the customer is outside the scope of this Policy Statement.

5. Electric Storage

78. In the Proposed Policy Statement, the Commission stated that if electricity storage technologies could be more widely deployed, they would present an important means of addressing some of the difficult issues facing the electric industry, including helping to address large-scale changes in generation mix. The Commission noted that, to date, the most significant bulk-electricity storage technology has been pumped storage hydroelectric technology but that new types of storage technologies are under development and in some cases are being deployed, and could also potentially provide substantial value to the electric grid.[108] The Commission proposed that, while continued research and development appeared necessary before any widespread deployment of such newer technologies can take place, it is appropriate to encourage the identification and standardization of all possible electricity storage use cases at an early stage. While the suggested prioritization of storage use cases was the Commission's only proposal in this area, the Commission then went on to highlight certain existing standards that may be relevant to further work on storage-related interoperability standards.[109]

Comments

79. GridWise Alliance describes the many benefits energy storage may provide to the nation's grid, such as grid optimization for bulk-power production; balancing in systems with variable renewable energy sources; facilitation of integration of electric vehicles; deferring investments in transmission and distribution infrastructure to meet peak loads; and providing ancillary services to grid/market operators.[110] Many commenters agree that standards for electric storage should be a priority. APPA agrees that standardization of use cases, protocols and communications regarding new types of electricity storage should be undertaken early to avoid a proliferation of competing and incompatible deployments of storage system technologies.[111] National Grid and Public Interest Organizations state that electric storage will enable system integration of greater amounts of renewable energy as well as improve overall system efficiency.[112] NERC recommends that the Commission adopt standards and protocols on electric storage, and states that NERC plans to work collaboratively with the Commission and the Institute on electric storage issues that could have an impact on bulk-power system reliability.[113]

80. Some commenters express reservations about establishing storage standards at this time. NYISO recommends that the Commission allow more time to develop experience with

[105] The Jurisdictional Concerns section of this Policy Statement contains a more extensive discussion of the boundaries between Federal and State jurisdiction.

[106] *See* Proposed Policy Statement, 126 FERC ¶ 61,253 at P 39.

[107] *Wholesale Competition in Regions with Organized Electric Markets*, Order No. 719, 73 FR 61,400 (Oct. 28, 2008), FERC Stats. & Regs. ¶ 31,281 (2008).

[108] For the purposes of this Policy Statement, electric storage refers to the storage of different forms of energy that may be beneficial to the bulk-power system. For example, while pumped hydroelectric storage refers to the potential energy stored in a reservoir of water, it is the conversion of that energy to electricity by a water turbine generator that makes it useful. Similarly, a flywheel stores kinetic energy to spin a generator, and batteries convert chemical energy directly into electricity. Moreover, there are useful applications for stored energy (for example, thermal energy) that is not converted into electricity, but can substitute for electrical power by providing an end use.

[109] Proposed Policy Statement, 126 FERC ¶61,253 at P 40.

[110] GridWise Alliance Comments at 11.

[111] APPA Comments at 14.

[112] National Grid Comments at 5, and Public Interest Organizations Comments at 3.

[113] NERC Comments at 20–21.

integrating these devices and that standardization of uses should await actual operating experience with these devices.[114] CAISO indicates that tariffs and not detailed standards would best shape storage development and integration.[115] Xcel voices a concern that early standardization of storage could stifle innovation.[116] CPower questions the Commission's ability to properly delineate yet un-developed storage use cases.[117]

Commission Determination

81. The Commission agrees with the comments of GridWise Alliance and others that electricity storage can serve as a potentially valuable resource providing a variety of services to the bulk-power system. We adopt our proposed policy position that electric storage is a key functionality of the smart grid, and standards related to storage should be treated as a key priority by the Institute and industry in the interoperability standards development process, subject to certain reservations. However, the Commission appreciates the concerns of commenters such as NYISO that have expressed reservations about the premature establishment of electric storage standards. Indeed, it was just such concern that led us, in the Proposed Policy Statement, to suggest prioritization of the development of storage use cases at that time. However, it is important to note that the Institute's interoperability standards development process has already assembled a limited number of storage use cases and identified a few standards that could be a starting point for development of interoperability standards for storage. Thus, we encourage the Institute and industry to continue this effort for interoperability standards for storage.

82. The Commission continues to believe that storage use case development is an important step on the path to developing relevant interoperability standards, and thus on the path to enabling the wider deployment of storage. However, any initial identification of storage use cases would not be exhaustive; if new use cases are identified in the future, they can be added to the initially identified set of use cases for storage at that time. Initial identification of use cases should not impede future storage innovations.

6. Electric Vehicles

83. The Commission also identified the integration of electric transportation as a key priority of smart grid functionality. The Commission stated that, to the extent that new electric transportation options become more widely adopted in the near future, maintaining the reliable operation of the bulk-power system will require some level of control over when and how electric vehicles draw electricity off of the electric system.

84. The Commission explained its hope that smart grid interoperability standards would ultimately accommodate a wide array of advanced options for electric vehicle interaction with the grid, including full vehicle-to-grid capabilities. However, as a first step, the Commission decided only to request that appropriate standards be made a high priority so that distribution utilities will be able to encourage customers to charge their vehicles during off-peak load periods.[118]

85. The Commission also noted that, for the potential provision of ancillary services to the grid by electric vehicles, electrical interconnection issues must be dealt with along with potential expansion of communications ability and urged the Society of Automotive Engineers and the automobile industry to plan upgradable data communications systems between electric vehicles and the power system. Finally, the Proposed Policy Statement urged the Institute to include electric vehicles in its distributed energy resource standards development.

Comments

86. National Grid points out the benefits of electric transportation as being a significant part of the solution to electric storage, shaping demand, and providing ancillary services to maintain reliability and operational efficiency of the electric delivery system.[119] NYISO agrees with the Commission's proposed approach toward addressing the greater penetration of electric vehicles and developing a common set of operating rules, market rules, and communication standards.[120] AWEA agrees with the Commission that electric vehicles can improve the flexibility of the grid and provide electricity storage solutions that help to address the potential for over-generation in off-peak periods.[121] Comverge agrees that electric vehicles deserve particular attention with respect to interoperability, smart charging, enhanced information processing, and high-speed communications and control.[122] NERC points out that the reliability of the bulk-power system could be impacted by high levels of the penetration of electric vehicles, changing the complexity of managing demand and energy dramatically.[123]

87. On the other hand, some commenters assert that either electric transportation technology itself or the standards for its integration should not be priority items. The most common reason stated is that widespread adoption of electric vehicles is seen as occurring too far into the future and that prioritization should be given to more immediately beneficial functionalities.[124] The early stage of electric vehicle development is also cited by CAISO and NRECA as a reason that it would be premature to develop standards for them.[125] While NRECA indicates that standards development should be put off until more research and analysis is done, CAISO indicates that standards should only address basic, structural, competitive and architectural issues. CAISO views electric vehicles as another resource to be shaped by tariff incentives rather than technology standards.

88. Kansas Commission questions which mandates related to vehicle charging and real time metering the Commission intends to implement. Kansas Commission also asks the Commission to clarify what it believes is the extent of its jurisdiction.[126] Maryland Counsel similarly expresses jurisdictional concerns when it asserts that, unless related to wholesale and transmission functions, electric vehicles will fall into the State's jurisdiction over distribution (and so costs related to them should not be recoverable in Commission-regulated rates).[127]

89. Allegheny Companies indicate that electric vehicles should be viewed like all pieces of equipment with demand response responsibility and that while electric transportation standard development should not be a priority, the grid must have flexible standards and protocols to support electric vehicles.[128] Ohio Partners view modifications to the grid to support electric vehicles as a subsidy for electric

[114] NYISO Comments at 11.

[115] CAISO Comments at 13–14.

[116] Xcel Comments at 5–6.

[117] CPower Comments at 5.

[118] Proposed Policy Statement, 126 FERC ¶ 61,253 at P 42.

[119] National Grid Comments at 5.

[120] NYISO Comments at 11.

[121] AWEA Comments at 10.

[122] Comverge Comments at 3.

[123] NERC Comments at 20–21.

[124] *See, e.g.,* Illinois Commission Comments at 3–4, Maryland Counsel Comments at 3–4, and Springfield Comments at 6.

[125] CAISO Comments at 13–14 and NRECA Comments at 19.

[126] Kansas Commission Comments at 6.

[127] Maryland Counsel Comments at 4.

[128] Allegheny Companies Comments at 4.

car makers to the harm of existing fuel retailers and at a cost to customers.[129]

Commission Determination

90. The Commission adopts the proposed policy position that electric transportation is a key functionality of the smart grid, and standards relating to electric transportation should be treated as a key priority by the Institute and industry in the process of developing interoperability standards. We agree with NERC that the reliability of the bulk-power system could be affected by the high levels of penetration by electric vehicles. However, the ability of distribution utilities to facilitate off-peak charging may be able to mitigate such reliability concerns. Discussions at the Institute's recent conferences indicate that certain metropolitan areas are likely to experience high penetrations of electric vehicles more quickly than others. NYISO suggests that environmental concerns could lead to relatively high levels of electric vehicle penetration in New York by 2020.

91. For these reasons, although the market will likely play the principal role in determining whether and when electric vehicle load will become significant for utility systems, we urge the early development of technical requirements that can permit distribution utilities to facilitate electric vehicle charging during off-peak load periods. Such technical capability should provide the State commissions with an additional tool to deal with any electric vehicle-related load growth that they may see in the future. Interoperability standards that support such a choice by states permitting the electric vehicle to, for example, receive and respond appropriately to peak pricing signals could greatly improve the success of such an effort. However, if another State commission sees no need for such price signals in its area, the mere existence of interoperability standards would in no way require the State to adopt such a pricing policy. Accordingly, we see no jurisdictional issues with this recommendation for prioritization.

7. Additional Priorities Suggested by Commenters

92. In addition to the key priorities listed in the Proposed Policy Statement, several commenters suggest additional priorities for interoperability standards: Modernization of the communications and control technologies in the grid; standards for existing resources (legacy) equipment and cost effective integration of legacy equipment; interfaces between utilities (with interfaces between utilities and customers and other systems to be developed along with State and other regulatory bodies); and limitations on access to and use of individual customer power usage information. The Valley Group states that, because standards for enabling technologies (rather than communications standards) will provide the grid with immediate and tangible benefits, these should also be a priority. AWEA lists several more general matters that it suggests must be addressed before broad-based deployment of smart grid technologies can fully utilize their potential to better accommodate renewable power. These include investment in an extra-high voltage backbone system, faster interval dispatch and scheduling, expanded area control error diversity, integration of wind energy forecasts, and dynamic line rating.

Commission Determination

93. The Commission will not make any additional standards a priority for development at this time. Some of the proposed additional priorities are already included in this Policy Statement. For example, support for the modernization of the communications and control technologies on the grid underlies this entire effort, and the use of legacy equipment as utilities migrate to a smart grid is addressed in the Interim Rate Policy. Similarly, to the extent that standards for enabling technology are needed to permit the development of useful smart grid capabilities like wide-area situational awareness standards, then such standards would be encompassed by our broader recommendation to make wide-area situational awareness standards a key priority.

94. Limitations on access to, and use of, individual customer power usage information may be addressed by retail regulators and, in any event, are beyond the scope of this Policy Statement. Finally, although the topics suggested by AWEA are important, they do not relate to the development of interoperability standards and, therefore, are more appropriate to address outside of this proceeding.

C. Interim Rate Policy

95. In the Proposed Policy Statement, the Commission stated that certain upcoming challenges to the operation of the bulk-power system justified enacting policies to encourage the near-term deployment of smart grid systems capable of helping to address those challenges.[130] Accordingly, the Commission proposed certain rate policies meant to encourage such near-term deployment while appropriately protecting customers from stranded costs and the electric system from potential cybersecurity threats. Consistent with FPA section 205, which requires that all rates for the transmission or sale of electric energy subject to the Commission's jurisdiction be just and reasonable,[131] the Commission proposed to consider smart grid devices and equipment—including those used in a smart grid pilot program or demonstration project—to be ''used and useful'' [132] for purposes of cost recovery if the applicant makes certain showings.[133]

1. Scope and Duration

96. In the Proposed Policy Statement, the Commission stated that, once interoperability standards are adopted, it will consider making compliance with those standards a mandatory condition for rate recovery of jurisdictional smart grid costs. For the period until interoperability standards are adopted, the Commission proposed the Interim Rate Policy to accept rate filings submitted under FPA section 205 by public utilities to recover the costs of smart grid deployments involving jurisdictional facilities, provided those filings make certain showings set out by the Commission in this Policy Statement. The Commission restated this proposal in terms of finding smart grid investments to be ''used and useful'' for purposes of rate recovery if an applicant makes these showings.

Comments

97. Several commenters support the Interim Rate Policy.[134] These commenters state that an interim rate policy is necessary for the deployment of smart grid resources. National Grid states that the Commission properly recognizes that utilities will only be willing to deploy smart grid equipment if they are able to recover the associated costs in regulated rates.[135] PSEG

[129] Ohio Partners Comments at 9.

[130] Proposed Policy Statement, 126 FERC ¶ 61,253 at P 45.

[131] 16 U.S.C. 824d.

[132] The general rate-making principle is that expenditures for an item may be included in a public utility's rate base only when the item is ''used and useful'' in providing service. *See NEPCO Municipal Rate Committee* v. *FERC,* 668 F.2d 1327, 1333 (D.C. Cir. 1981).

[133] Proposed Policy Statement at P 45.

[134] Gridwise Alliance Comments at 12, PSEG Companies Comments at 4–5, 8, National Grid Comments at 5–7, Duke Comments at 11–12, Comverge Comments at 5–6, and FirstEnergy Comments at 10.

[135] National Grid Comments at 5.

believes that implementing the Interim Rate Policy is a critical component in advancing the ultimate smart grid evolution.[136]

98. Allegheny Companies assert that utilities with stated transmission rates may fail to recover their full cost of service as the deployment of smart grid technologies may reduce the amount of electricity they sell, and argue that rates should be revised to decouple revenues from electricity sold.[137] Meanwhile, several commenters expect or seek clarification that smart grid costs can be recovered in formula rates including existing formula rates, and that existing rate formulae do not require modification in order to accommodate such smart grid costs.[138]

99. NARUC states that efficiency gains and other related benefits of smart grid deployments should be factored into rate-setting before passing all costs through to consumers.[139] NARUC also comments that any government funding under the Department of Energy smart grid grant programs should be factored into cost recovery. AARP urges caution regarding expedited consideration of such rate filings before final adoption of interoperability standards.[140]

100. Wal-Mart proposes that the Commission include a deadline for either terminating or at least revisiting the Interim Rate Policy.[141] Alternatively, Wal-Mart argues for a deadline by which utilities who have made use of the Interim Rate Policy must file a full rate case. Wal-Mart also supports the concept of some type of sharing of risk with shareholders.

101. Alcoa asserts that the Proposed Policy Statement is silent about cost allocation issues associated with smart grid costs and argues that the Commission should specify that smart grid costs will be allocated in accordance with long-standing cost causation principles.[142] In particular, Alcoa argues that consideration of cost causation and allocation based on proportional benefits should be specified so that, for example, stable high load-factor loads would not be over-burdened by the allocation of costs for smart grid equipment deployed primarily to support variable loads and resources.[143] Meanwhile, GridSolar states that existing cost allocation schemes within RTOs may unduly favor the development of transmission over competing distributed energy projects by allocating costs regionally while a competing distributed energy project might only qualify for local cost allocation.[144] GridSolar urges the Commission to require that, where distributed energy projects incorporating smart grid technologies and practices have been approved by a State regulatory commission in lieu of transmission reliability upgrades, these distributed energy projects receive the same cost allocation treatment as transmission reliability upgrades.

102. Several entities comment on broad market design issues. CPower, in an appendix to its filing, includes a letter to the Commission dated February 24, 2009 that includes various rate proposals.[145] The letter includes proposals for how demand response should participate in various RTO markets. Academic Commenters believe that the Proposed Policy Statement does not go far enough because it fails to provide guidance on the revised market structures that they believe would be needed to realize the benefits of a smart grid.[146] BP makes similar comments, focusing primarily on the possibility of moving away, at least partially, from the current model of centrally dispatched large-scale generation with passive load to a more decentralized decision-making process more like other commodities markets.[147] CAISO indicates that a wholesale energy and transmission market that allows a more refined and granular understanding of what is happening on the grid would take better advantage of smart grid capabilities.[148] NEMA points out that some smart grid technologies, like Phasor Measurement Units and associated software, could have benefits beyond those identified in the Proposed Policy Statement.[149]

Commission Determination

103. The Commission will adopt an Interim Rate Policy allowing the recovery of jurisdictional smart grid costs if certain showings are made, as discussed in the next section. Through this Interim Rate Policy, the Commission will provide for assurance of recovery of future smart grid costs. To receive this assurance, a public utility must file either a petition for declaratory order or an FPA section 205 filing demonstrating that it has made the relevant showings described below. This Interim Rate Policy will be effective until relevant interoperability standards have been adopted through Commission rulemakings, as provided for under EISA section 1305(d).[150] There are certain potentially imminent challenges to the operation of the nation's bulk-power system as described earlier, and the key smart grid-related capabilities identified in this Policy Statement can help address these concerns. Utility equipment that performs Commission-jurisdictional activities could be affected by many of these smart grid-related investments. Accordingly, we find that the adoption of the Interim Rate Policy is appropriate.

104. Several commenters argue that having an Interim Rate Policy for smart grid investments is premature, citing unresolved technical issues, such as interoperability standards. However, waiting for all technical issues to be resolved before beginning investment in smart grid deployment would frustrate the development of those very standards. Smart grid resources deployed with appropriate protections in the interim period could increase our body of knowledge and ultimately assist the standards development process. In this case, the Commission proposed several protections, in the form of additional showings, to be discussed in the next section.

105. Several commenters seek to modify rate treatments other than those targeted by the Commission in the Proposed Policy Statement. Allegheny Companies seek a decoupling of electricity sales from revenues to encourage utilities to develop these technologies even though they may lead to lower electricity revenues. The Commission finds that Allegheny Companies' proposal is beyond the scope of this Policy Statement.

106. Alcoa's arguments regarding cost allocation are outside the scope of this Policy Statement. We have not proposed any modification to currently-effective cost allocation policies for Commission-jurisdictional transmission rates. For similar reasons, we decline to address GridSolar's request to modify cost allocation methods within RTOs, Valley Group's real-time ratings incentive proposal, and the comments on broad market design.

[136] PSEG Comments at 4.

[137] Allegheny Comments at 8.

[138] American Transmission Comments at 6–7, EEI Comments at 14, and National Grid Comments at 6.

[139] NARUC Comments at 12.

[140] AARP Comments at 4, 13–15.

[141] Wal-Mart Comments at 6–7.

[142] Alcoa Comments at 6–7.

[143] *Id.* at 7.

[144] GridSolar Comments at 6–8.

[145] CPower states that this letter was originally submitted in connection with the Commission's demand response stakeholder process. It is not entirely clear what stakeholder process is referenced but it appears to have been an informal submission.

[146] Academic Commenters Comments at 1–13.

[147] BP Comments at 3–6.

[148] CAISO Comments at 3–4.

[149] NEMA Comments at 7–8.

[150] Thus, utilities that want to receive the benefit of this Interim Rate Policy must submit their filings seeking such treatment prior to the issuance of a final rule adopting relevant standards.

107. Smart grid costs may be recovered through formula rates if the formula rate already authorizes cost recovery of a particular type of investment. In this case, the public utility may recover that cost as it would any other recoverable cost. However, in the event the public utility desires the assurance of cost recovery provided under the Interim Rate Policy, it must submit an FPA section 205 filing or a request for a declaratory order justifying such rate treatment by making the demonstrations required herein.[151] In the absence of a Commission order approving such a proposal, a smart grid-related cost automatically incorporated into a formula rate could be subject to future review and challenge.

108. Finally, with regard to Wal-Mart's proposal for a stated deadline for terminating or revisiting the Interim Rate Policy, the Interim Rate Policy is structured to allow applicants to file with the Commission for rate treatment under the Interim Rate Policy until the Commission adopts relevant interoperability standards. This is necessary because standards will likely be filed for certain functions before others and setting an arbitrary deadline may result in rate treatment for some standards and not others. Moreover, our regulations, which are based on the requirements of the FPA, provide customers with the ability to file complaints if they believe that an existing rate has become unjust or unreasonable. Because this Interim Rate Policy provides protections in addition to such existing protections, nothing more is needed here.

2. Additional Showings

109. In the Interim Rate Policy, the Commission proposed to require applicants seeking the recovery of costs associated with smart grid investments made during the period in which interoperability standards are being developed to make several showings, beyond the normal filing requirements, before being considered ''used and useful'' and therefore eligible to recover such costs. First, the Commission proposed that an applicant must demonstrate that the reliability and security of the bulk-power system will not be adversely affected by the deployment of smart grid facilities at issue. Second, the Commission proposed that the filing be required to show that the applicant has minimized the possibility of stranded costs for smart grid equipment, in light of the fact that such filings will predate adoption of interoperability standards through Commission rulemakings. Finally, because it would be important for early smart grid deployments, particularly pilot and demonstration projects, to provide feedback useful to the interoperability standards development process, the Commission proposed to direct the applicant to share certain information with the Department of Energy Smart Grid Clearinghouse, provided for in the American Recovery and Reinvestment Act (ARRA).[152]

Comments

110. Midwest ISO Transmission Owners fully support the Commission's proposals regarding the used and useful determination for smart grid costs.[153] Ice Energy supports the proposed eligibility requirements and discusses how its own thermal-storage air conditioning technology meets those requirements and could aid utility compliance with those requirements as well.[154] Public Interest Organizations support the criteria already included in the Interim Rate Policy, and also propose two additional criteria: First, a requirement that the smart grid cost in question be vetted through a regional planning process and that such planning process demonstrates the value of such investments for meeting reliability, security, dispatchable demand response, or renewable energy integration needs, and second, a requirement to perform a cost/benefit analysis.[155] Ohio Counsel states that it fully supports the comments made by Public Interest Organizations but would add further emphasis to the need for a comprehensive plan based upon appropriate criteria to insure prudence in project scope, implementation, and cost recovery. It views this as necessary to insure that the cost/benefit analysis of the deployment will be favorable and that the guidelines for cost recovery are prudent and net of operation and asset management benefits.[156]

111. NRECA states that smart grid deployments should not exceed ''the pace of value'' with new elements entering the system only as they are able to demonstrate value.[157] Ohio Partners and Maryland Counsel similarly argue that the benefits to customers must be shown before cost recovery is granted.[158] Likewise if any Interim Rate Policy is finalized, ELCON believes that it must incorporate a cost/benefit requirement.[159]

112. Several commenters[160] also support the addition of a cost-effectiveness requirement. In this regard, North Carolina Agencies stress the need for coordination with the affected State commissions, and Wal-Mart points to item number six in the document ''Proposed Funding Criteria for the ARRA Smart Grid Matching Grant Program'' recently proposed by the NARUC/FERC Smart Grid Collaborative to the Department of Energy, which proposes a variety of information requirements that could be used to help determine cost-effectiveness. Springfield argues that utilities should be required to demonstrate that they are following best utility practices, and should be required to demonstrate the incremental benefit of smart grid deployment as if such best practices were in place.[161]

113. Illinois Commission argues that the Commission's proposed requirements seem to assume that smart grid proposals are economically justified by their very nature.[162] Illinois Commission points out that under the Department of Energy's grant criteria, a smart grid project could be denied grant funding if it fails to adhere to the Institute-published standards, but under the Interim Rate Policy the same project could receive rate recovery and, in particular, guaranteed recovery of abandonment costs. Illinois Commission seeks clarification that this would not be automatically permitted. Instead, Illinois Commission argues that during the period between when the Institute publishes standards and the Commission adopts them through rulemaking, any affected smart grid rate recovery applicants should have the burden to establish that such project remains used and useful.[163] Illinois Commission and AWEA also urge the Commission to limit application of the Interim Rate Policy to only those smart grid projects that further the Commission's goals associated with the two cross-cutting issues and priority functionalities identified in the

[151] The Commission will allow a public utility to file to amend a formula rate to recover such costs and to seek rate assurance under this Interim Rate Policy without reopening other elements of the formula rate.

[152] *American Recovery and Reinvestment Act*, Pub. L. 111–5, section 405(3)(2009).

[153] Midwest ISO Transmission Owners Comments at 7.

[154] Ice Energy Comments at 19–20.

[155] Public Interest Organizations Comments at 4.

[156] Ohio Counsel Comments at 1–3.

[157] NRECA Comments at 13–14.

[158] Ohio Partners and Maryland Counsel Comments at 5–6.

[159] ELCON Comments at 10.

[160] CPower Comments at 2, Alcoa Comments at 9, PSEG Companies Comments at 2, North Carolina Agencies Comments at 3, and Wal-Mart Comments at 6.

[161] Springfield Comments at 10.

[162] Illinois Commission Comments at 4.

[163] *Id.* at 6. Maryland Counsel Comments at 5, n.4.

Proposed Policy Statement.[164] Finally, Illinois Commission also argues that the Commission should maintain a traditional cost-causation, beneficiary-pays cost allocation methodology and, in particular, prohibit broad socialization of such costs within RTOs.[165]

114. Michigan Commission argues that the Interim Rate Policy should be applied carefully and conservatively to avoid inefficient spending on equipment that does not promote real progress toward true smart grid functionality. Michigan Commission is particularly concerned about permitting cost recovery for smart grid deployments that cannot be upgraded to final interoperability standards. Accordingly, it argues that if the Commission proceeds with an Interim Rate Policy, it should clarify that its eligibility criteria will be strictly applied and only available to investments that create significant new smart grid functionality or serve as the basis for upgrading or expanding such functionality in the future.[166]

115. Indianapolis P&L also supports the proposed criteria but requests that the Commission apply these criteria with some degree of flexibility given that national smart grid development is a work-in-progress. Specifically, Indianapolis P&L suggests that the need to demonstrate good faith adherence to the smart grid vision articulated in EISA may be complicated by the early stage of the interoperability process generally. In this regard, Indianapolis P&L suggests that any evaluation of applicant good faith decisions take into account the state of affairs at the time any decisions were made.[167] Regarding the requirement to share information with the Department of Energy Smart Grid Clearinghouse, Indianapolis P&L respectfully requests that confidential and commercially-sensitive information not be demanded or that appropriate protections be permitted to apply.[168]

116. FirstEnergy urges the Commission not to require applicants to make showings that would be unreasonable, overly burdensome, or inflexible such that any proposed cost recovery would discourage investment. It does not, however, specify whether any of the Commission's proposed eligibility criteria would fall into this category.[169] DRSG Coalition, on the other hand, seems to argue that some of the Commission's proposed security criteria for cost recovery may be overly burdensome.[170]

117. SDG&E proposes that, where an application for rate recovery or incentives involves the utility's share of the cost of a project receiving partial Department of Energy funding, the Commission could deem the utility's share of the investment *per se* prudent as used and useful plant so that rate recovery of such costs would be deemed *per se* just and reasonable. If this proposal is not adopted outright, then SDG&E argues that the Commission should at least apply a rebuttable presumption that such costs are *per se* prudent and their rate recovery would be *per se* just and reasonable.

118. AARP argues that the Commission's proposed eligibility criteria are equivalent to ''near automatic rate recovery'' for new investments labeled ''smart grid.'' [171] AARP does not believe that the Commission's statutory responsibility to insure just and reasonable rates can be fulfilled with such criteria. First, it asserts that the Commission has failed to identify the specific investments, devices, or other systems that would or could be subject to the proposed Interim Rate Policy. It also asserts that the Commission should require applicants to affirmatively demonstrate benefits, such as enhanced reliability, as a condition for rate recovery. It also seems to argue that rate recovery should not be granted unless the applicant can demonstrate that the smart grid equipment in question can be upgraded.[172] Finally, AARP proposes that the Commission require applicants to demonstrate that their investments have been reviewed and approved by State regulators when those investments are intimately related to, and coordinated with, investments that are subject to State regulatory authorities.[173]

119. APPA has two concerns in this area.[174] First, it is concerned that only smart grid costs associated with wholesale rates and transmission functions be recovered through filings under this proposal. It argues that the cost of smart grid installations that support retail service should be recovered in retail rates. Second, APPA opposes the Commission's proposal to consider smart grid devices and equipment to be used and useful for cost recovery purposes if the applicant meets the criteria set out in the Proposed Policy Statement. APPA believes that such treatment shifts the burden of proof from the applicant to customers opposing such a finding. Third, APPA believes that applicants for smart grid-related rate recovery or incentives should be required to show that their suppliers have attested to the integrity of the components used in the smart grid installation in question.

120. Kansas Commission concurs with the need to provide certainty and guidance regarding cost recovery issues but expresses concerns regarding the three criteria proposed by the Commission. Specifically, it prefers that more traditional demonstrations of the used and useful requirement be preserved and also supports a cost/benefit requirement.[175] Massachusetts Attorney General believes that no smart grid costs should be eligible for rate recovery until after the Institute provides guidance on which technologies are most cost effective and where device deployment will be most valuable.[176] Massachusetts Attorney General also recommends that the Commission require applicants to demonstrate that they maximized all opportunities to secure Federal funding to offset the costs associated with smart grid deployment.

121. Citizens Coalition opposes the proposal to find smart grid equipment used and useful if three conditions are met on the basis that such changes are ''simply dishonest manipulation of traditional utility principles.'' [177] It also expresses concern with the proposal to require good faith efforts to adhere to the vision of a smart grid described in Title XIII of EISA. Specifically, it opposes a ''good faith'' standard and instead urges that applicants be required to show that they acted reasonably and prudently, which it characterizes as a standard of reasonableness.

Commission Determination

122. To help inform our review for rate approval of smart grid costs, an applicant seeking the recovery of smart grid costs must make four demonstrations. The first, and threshold, demonstration is that an applicant must show that the smart grid facilities will advance the goals of EISA section 1301. Second an applicant must show that the reliability and

[164] Illinois Commission Comments at 6–7 and AWEA Comments at 11–12.

[165] Illinois Commission Comments at 7.

[166] Michigan Commission Comments at 10–12.

[167] Indianapolis P&L Comments at 4.

[168] *Id.* at 4–5.

[169] First Energy Comments at 10.

[170] DRSG Coalition Comments at 9–10.

[171] AARP Comments at 10.

[172] The Proposed Policy Statement encourages upgradeability but stops short of requiring it because it may not always be technically or economically feasible. Proposed Policy Statement, 126 FERC ¶ 61,253 at P 49.

[173] AARP Comments at 10–12.

[174] APPA Comments at 16–17, 19.

[175] Kansas Commission Comments at 7–8.

[176] Massachusetts Attorney General Comments at 3–4.

[177] Citizens Coalition Comments at 10, 12–13.

cybersecurity of the bulk-power system will not be adversely affected by the deployment of the smart grid facilities at issue. Third, the applicant must show that it has minimized the possibility of stranded investment in smart grid equipment, in light of the fact that such filings will predate adoption of interoperability standards. Finally, because it will be important for early smart grid deployments, particularly pilot and demonstration projects, to provide feedback useful to the interoperability standards development process, an applicant must agree to provide feedback useful to the interoperability standards development process, by sharing information with the Department of Energy Smart Grid Clearinghouse.

123. To make the first and threshold demonstration, an applicant must describe the proposed investment (including the technologies, systems, and applications it entails) and how it is consistent with the policy and one or more of the goals Congress set forth in section 1301 of EISA. In section 1301 of EISA, Congress made clear that ''it is the policy of the United States to support the modernization of the Nation's electricity transmission and distribution system to maintain reliable and secure electricity infrastructure that can meet future demand growth'' and to achieve certain goals, ''which together characterize a Smart Grid.'' [178] Those goals include increased use of digital information and controls technology to improve reliability, security, and efficiency of the electric grid, dynamic optimization of grid operations and resources, with full cybersecurity, and deployment and integration of distributed resources and generation, including renewable resources, demand side resources and energy efficiency resources. This threshold showing was implicit in the Proposed Policy Statement, but in light of many comments we received, we now state it explicitly.

124. In order to make the second showing, an applicant must describe how its proposed deployment of smart grid equipment will maintain compliance with Commission-approved Reliability Standards, such as the CIPS Reliability Standards, during and after the installation and activation of smart grid technologies so the reliability and cyber security of the bulk-power system will not be jeopardized. An applicant must also address: (1) The integrity of data communicated (whether the data is correct), (2) the authentication of the communications (whether the communication is between the intended smart grid device and an authorized device or person), (3) the prevention of unauthorized modifications to smart grid devices and the logging of all modifications made, (4) the physical protection of smart grid devices, and (5) the potential impact of unauthorized use of these smart grid devices on the bulk-power system.

125. To make the third showing concerning potential stranded smart grid investment, applicants must show how they have relied to the greatest extent practical on existing, widely adopted and open [179] interoperability standards; and where feasible, relied on systems and firmware that can be securely upgraded readily and quickly.

126. Finally, to make the showing concerning the sharing of information, an applicant must agree to share with the Department of Energy Smart Grid Clearinghouse the same information required by the Department of Energy for its grant program. While in the Proposed Policy Statement the Commission initially proposed seven specific categories of information to be shared, modeled on a similar proposal made to the Department of Energy by the NARUC/FERC Smart Grid Collaborative, the Department of Energy has now released its final information sharing requirements and we will rely on those requirements instead.

127. Some commenters argue that these showings represent a departure from traditional ratemaking practice. We disagree. These showings do not replace the Commission's existing demonstrations, but supplement them. The supplemental information is needed in this case to assure the Commission that recovery of investments in these new technologies, in some cases still experimental, are serving the interests of consumers while advancing the effort to create a smart grid. Further, although the Commission generally does not allow the recovery of new costs outside a rate case, we will do so for smart grid costs as explained further below, and this fact alone creates a need for additional filing requirements designed for just these costs. Here we are allowing cost recovery for jurisdictional smart grid costs based on traditional standards of review with an added showing that the technologies will not adversely affect the security and reliability of the grid, have minimized potential stranded investment related to consistency with interoperability standards as they are fully developed over time, and assist in providing information for future projects. Such considerations are fully consistent with the ''used and useful'' standard, and are the proper determinations for the Commission to make when considering whether a smart grid cost is just and reasonable in this interim period before a substantial body of relevant interoperability standards are adopted through Commission rulemaking.

128. These considerations do not constitute automatic rate recovery for smart grid projects, as some commenters have suggested. The Commission has laid out specific showings that must be made, in addition to normal rate filing requirements, for rate recovery for a smart grid project to be approved. The burden is on the applicant to make these showings.

129. The Commission rejects the arguments that a formal cost/benefit or cost-effectiveness analysis should be required in addition to these three filing requirements. Under section 205 of the FPA, the Commission already considers whether rates are just and reasonable and not unduly discriminatory. Formal quantitative analyses typically contain some areas with highly subjective benefits that could lead to protracted debate between each side's experts and increase the cost of litigation. Further, a cost-benefit analysis would be particularly infeasible in this instance. For example, if the benefits of smart grid deployment were to include enhanced ability to accommodate changes in generation mix, including heavier reliance on renewable generation, then the costs of failure to deploy such technology could potentially include such hard-to-quantify costs as the results of global climate change. Such cost estimates will be highly dependent on a broad range of assumptions and would likely be highly contentious in every case. Accordingly, the value of such a requirement would be questionable. In any event, intervenors in rate proceedings can and do raise the issue of whether utility investments

[178] EISA section 1301.

[179] An open architecture is publicly known, so any and all vendors can build hardware or software that fits within that architecture, and the architecture stands outside the control of any single individual or group of vendors. In contrast, a closed architecture is vendor-specific and proprietary, and blocks other vendors from adoption. An open architecture encourages multi-vendor competition because every vendor has the opportunity to build interchangeable hardware or software that works with other elements within the system. *See* Gridwise Architecture Council Decision-Maker's Interoperability Checklist Draft Version 1.0, *http://www.gridwiseac.org/pdfs/gwac_decisionmakerchecklist.pdf.* We note that Congress recently made utilization of open protocols and standards, if available and appropriate, a condition of receiving funding from the Department of Energy for demonstration projects and grants pursuant to EISA section 1304 and 1306. *See* ARRA section 405(3) and 405(8).

were prudently made in light of their costs and they may continue to do so.

130. Several commenters state that the Commission should identify what devices will be eligible for smart grid rate recovery. The Commission will not attempt to list all the particular facilities, equipment, or devices that are eligible or ineligible. In response to APPA and others, and as noted above, rate recovery will apply only to smart grid costs within the Commission's FPA jurisdiction. EISA does not alter the FPA's jurisdictional boundaries between Federal and State regulation over the rates, terms, and conditions of transmission service and sales of electricity.

3. Incentives Under the Interim Rate Policy

131. In its Proposed Policy Statement the Commission proposed several incentive rate treatments for smart grid costs. These rate treatments are meant to encourage the adoption of and investment in smart grid technologies.

a. Single Issue Ratemaking

132. As part of the Interim Rate Policy, the Commission proposed that jurisdictional entities should be able to recover costs for used and useful smart grid facilities on a single issue basis. That is, entities would be able to recover the cost of smart grid investments without having to open their entire rate base to Commission review.

Comments

133. Some commenters [180] support the Commission's proposal to permit single issue rate filings for qualifying smart grid investments. NYISO notes that allowing jurisdictional transmission owners to recover the cost of investment in new controls and communication devices may assist in stimulating needed investment.[181] Midwest ISO Transmission Owners state that such a policy will encourage investment because it allows transmission owners to invest in smart grid equipment without running the risk that other aspects of their system-wide rates will become subject to review and possible alteration.[182]

134. Several commenters argue against the proposed single issue ratemaking, and state that the Commission should adhere to traditional ratemaking practices.[183] ELCON states that such cost recovery is premature, given unresolved technical issues.[184] APPA argues that single issue ratemaking for smart grid technology could lead to an over-recovery of costs, and is part of a trend in which the Commission overlooks its duty to insure just and reasonable rates in the name of current policy goals.[185] Commenters also argue against treating approved smart grid technologies as used and useful.[186] Citizens Coalition opposes any special rate treatment for smart grid equipment, as does ELCON for the same reasons that it opposes finalization of the Interim Rate Policy generally.[187]

135. EEI also argues that for purposes of smart grid-related single issue rate filings, the Commission should consider providing waiver of the full financial data requirements in the Commission's regulations. In particular, EEI argues that Period I data may be adequate for determining whether such rates are just and reasonable and the otherwise required Period II data may not be needed.

Commission Determination

136. The Commission will allow single issue rate treatment for the recovery of costs associated with smart grid investments as part of its Interim Rate Policy. Although the Commission generally does not allow the recovery of new costs outside a rate case that considers all costs, the Commission has entertained exceptions for special cases. For example, in implementing FPA section 219, as enacted in the Energy Policy Act of 2005, the Commission has stated that it would allow single issue rate treatment for new transmission projects.[188] Furthermore, such rate treatment is not unheard of in other jurisdictions; retail rates may include surcharges to the base rates in order to recover unusual, or ''single issue,'' costs.[189] Here the Commission will allow single issue rate treatment in response to a pressing need for the development of new and innovative smart grid capabilities that will be needed by the electric system, and in response to a statutory directive to support the modernization of the electric grid. This will in no way affect the ability of customers to file a complaint pursuant to section 206 of the FPA if they believe that the ultimate rate charged by the public utility is no longer just and reasonable.

137. As to EEI's request for clarification regarding waiver of the full financial data requirements in the Commission's regulations, the Commission already permits applicants to seek such waiver on a case-by-case basis. On the record before us, we see no need for a blanket waiver. Applicants seeking such a waiver must retain the burden for supporting the waiver.

b. Recovery of Stranded Costs for Legacy Systems

138. The Commission also proposed to permit applicants to seek recovery of the otherwise stranded costs of legacy systems that are to be replaced by smart grid equipment. The Commission stated that an appropriate plan for the staged deployment of smart grid equipment, which could include appropriate upgrades to legacy systems where technically feasible and cost-effective, could help minimize the stranding of unamortized costs of legacy systems. The Commission therefore proposed that any request to recover stranded legacy system costs must demonstrate that such a migration plan has been developed.

Comments

139. AARP argues that the proposed stranded cost policies for legacy systems are unreasonable because they may present significant cost risk exposure to consumers. AARP recommends that the Commission transfer at least some portion of the risks of stranded costs from ratepayers to shareholders.[190] APPA states that retail costs, including stranded costs, should not be reflected in wholesale rates. APPA also argues that applicants should be required to make every effort to minimize the stranding of legacy costs through phased integration strategies.[191] Citizens Coalition opposes any recovery of the stranded legacy costs of legacy systems, stating that past stranded cost proceedings cost consumers billions of dollars.[192] It argues that smart grid advocates should reimburse utilities and

[180] SDG&E Comments at 24–25, Indianapolis P&L Comments at 3–4, Black Hills Corp. Comments at 4, Midwest ISO Transmission Owners Comments at 3–7, and Allegheny Companies Comments at 8.

[181] NYISO Comments at 12.

[182] Midwest ISO Transmission Owners Comments at 4.

[183] NRECA Comments at 11–13, Maryland Counsel Comments at 2, 4–5, Ohio Partners Comments at 9–10, ELCON Comments at 9–10, and Citizens Coalition Comments at 12–14.

[184] ELCON Comments at 9–10.

[185] APPA Comments at 17–18.

[186] NRECA Comments at 11–13, Maryland Counsel Comments at 4, and Ohio Partners at 9–10.

[187] Citizens Coalition Comments at 14 and ELCON Comments at 13.

[188] *Promoting Transmission Investment Through Pricing Reform,* Order No. 679, FERC Stats. & Regs. ¶ 31,222, at P 191 (2006), *order on reh'g,* Order No. 679–A, FERC Stats. & Regs. ¶ 31,236 (2006), *order on reh'g,* 119 FERC ¶ 61,062 (2007).

[189] *See, e.g.,* Kan. Stat. Ann. section 66–117(f) (2009), Pa. Pub. Util. Code section 2804(16)(ii) (2009) and *WUTC* v. *Puget Sound Energy, Inc.,* Docket Nos. UE–011570 and UG–011571, at P 25 and 27 (2002).

[190] AARP Comments at 12–13.

[191] APPA Comments at 20.

[192] Citizens Coalition Comments at 9, 14.

their customers for such costs if they wish to replace such systems prematurely. ELCON also opposes permitting recovery of the stranded cost of legacy systems.[193] NRECA argues that if the Commission's discussion of permitting applicants to seek stranded cost recovery was meant to change existing ratemaking policies, the Commission must provide more justification for doing so and detailed criteria for evaluating such applications.[194] Additionally, several commenters argue that every effort should be made to minimize the stranding of legacy costs.[195]

140. Other commenters support the Commission's proposals with respect to recovery of the stranded investment in legacy systems to be replaced by smart grid equipment, including the proposals meant to minimize such stranded costs.[196] FirstEnergy also proposes that the Commission consider permitting accelerated depreciation or amortization for legacy systems to be replaced with smart grid equipment.[197]

Commission Determination

141. As part of the Interim Rate Policy, the Commission will allow single issue rate treatment of otherwise stranded costs for jurisdictional legacy systems being replaced by jurisdictional smart grid equipment, provided that proposals to recover these costs are supported by an equipment migration plan that minimizes the stranding of unamortized costs of legacy systems. Elsewhere in this document, the Commission discusses several major potential challenges to the operation of the bulk-power system, and the smart grid capabilities that could help address those challenges. We view these challenges as potentially serious enough to justify making the development of these smart grid capabilities a high priority. Accordingly, if developing these capabilities requires the early replacement of some legacy equipment, we would view that as a strong argument for doing so, and would not necessarily render these previously-approved investments imprudent.

c. Additional Incentive Rate Treatments

142. The Commission also stated that it will entertain requests for rate treatments such as accelerated depreciation and abandonment authority (whereby an applicant is assured of recovery of abandoned plant costs if the project is abandoned for reasons outside the control of the public utility) specifically tied to smart grid deployments under our FPA section 205 authority. The Commission stated that any requests for such rate treatment for smart grid costs would need to address all of the requirements for rate recovery and make the showings described in FPA section 205. The Commission also stated that it would consider applying these rate treatments to the portion of a smart grid pilot or demonstration project's cost that is not already paid for by Department of Energy funds, such as those authorized by EISA sections 1304 and 1306.[198] The Commission further stated that to the extent that such showings are made as discussed, it proposed to consider permitting abandonment authority to apply to any smart grid investments that, despite reasonable efforts, could not be upgraded and must ultimately be replaced if found to conflict with the final standards approved in the Institute's standards development process.

Comments

143. SDG&E supports the Commission's incentive proposals, particularly as to accelerated depreciation and the opportunity to recover the costs of abandoned plant. However, SDG&E seeks clarification that the Commission will entertain rate requests for abandoned plant costs over and above undepreciated capital costs, including other costs associated with abandoned facilities such as costs of early or premature contract termination.[199]

144. In contrast, AARP urges caution regarding incentives for smart grid equipment before the adoption of final interoperability standards and proposes that requests for such incentives should be required to document the costs and benefits that will ultimately be borne by retail consumers. As with cost recovery generally, AARP argues that the Commission should identify specific investments, devices, or other systems that would or could be eligible for incentive treatment under this proposed policy. AARP argues that, at a minimum, requests for incentive treatment should be required to document the actual and improved reliability benefits from such investments and the applicant should bear all of the risk that those benefits will actually occur. Citizens Coalition opposes any special rate treatment for smart grid equipment, as does ELCON for the same reasons that it opposes finalization of the Interim Rate Policy generally.[200] NRECA states that if the Commission's discussion of permitting applicants to seek rate treatments such as accelerated depreciation and abandonment authority was meant to change existing ratemaking policies, the Commission must provide more justification for doing so and detailed criteria for evaluating such applications.[201]

145. Massachusetts Attorney General urges the Commission to consider prohibiting, or at least significantly limiting, applicants' ability to recover return on equity incentive adders for smart grid investments. It argues that the potential risks associated with smart grid investments are minimal compared to large-scale transmission projects, especially in light of Department of Energy support through stimulus funding.[202]

146. In contrast, Allegheny Companies recommend that three additional rate treatments be permitted: incentive return on equity, recovery of a return on 100 percent of construction work in progress, and the expensing of pre-commercial costs.[203] Allegheny Companies also support the proposals regarding accelerated depreciation and abandonment but request that applicants be permitted to demonstrate on a case-by-case basis significantly shorter depreciable lives for early smart grid investments without needing to demonstrate that such shorter lives are required for cash flow purposes.[204]

147. Valley Group asserts that real-time transmission ratings could reduce congestion cost by enabling more of the existing capacity of transmission facilities to be used safely, and proposes a new rate incentive tied to investment associated with enabling real-time transmission ratings.[205]

148. Finally, ITC Companies and EEI request clarification regarding the interplay between Order No. 679 and the incentive rate treatments discussed in the Interim Rate Policy. ITC Companies request that the Commission clarify that smart grid technologies applicable to the transmission system are considered advanced transmission

[193] ELCON Comments at 13.

[194] NRECA Comments at 14–15.

[195] Ohio Partners Comments at 11, National Grid Comments at 7, and Maryland Counsel Comments at 6.

[196] SDG&E Comments at 26, FirstEnergy Comments at 10, Midwest ISO Transmission Owners Comments at 9–11, PSEG Companies Comments at 8, and Black Hills Corp. Comments at 4.

[197] First Energy Comments at 10.

[198] To be codified at 42 U.S.C. 17384 and 17386.

[199] SDG&E Comments at 26–27.

[200] Citizens Coalition Comments at 14 and ELCON Comments at 13.

[201] NRECA Comments at 14–15.

[202] Massachusetts Attorney General Comments at 5–6.

[203] Allegheny Companies Comments at 6–7.

[204] *Id.* at 8–9.

[205] Valley Group Comments at 2, 5–6.

technologies eligible for transmission rate incentives under Order No. 679.[206] EEI asks the Commission to clarify whether the Commission will differentiate between devices that qualify for advanced technology incentives under Order No. 679 and those that qualify under the Interim Rate Policy; or whether the same technology may qualify for either incentive. EEI also requests that the Commission clarify whether projects receiving treatment under the Interim Rate Policy preclude smart grid projects from receiving incentives under Order No. 679.[207] AARP argues that such single issue rate filings should be required to adhere to the Commission's regulations and conform to procedures enacted under FPA section 219.[208]

Commission Determination

149. The Commission will permit utilities to request accelerated depreciation and abandonment authority under the terms of its Interim Rate Policy under FPA section 205. As discussed elsewhere in this Policy Statement, smart grid investment can help address major challenges facing the bulk-power system. However, as with any section 205 filing or petition for declaratory order, the Commission will make the rate determination based on the specific facts and circumstances presented, including the relationship to other incentives, if any.

4. Potential Interplay With Department of Energy Funding Grants

150. Subsequent to the Commission's issuance of the Proposed Policy Statement, the Department of Energy announced two smart grid funding opportunities for up to fifty percent of the costs of certain smart grid projects. In addition, the Department of Energy planned to require applicants to identify the source of non-Department of Energy funds, along with some evidence as to the certainty of these funds.

151. Given that applicants for these programs might include jurisdictional public utilities that seek rate recovery through Commission-jurisdictional rates for the non-Department of Energy portion of funds for transmission-related projects, the Commission sought supplemental comments on the matter. The Commission received 16 supplemental comments.

Comments

152. There are two major themes in the supplemental comments. First, the investor-owned electric industry is supportive of the Commission's proposal to conditionally approve rate adjustments on smart grid projects, including those eligible for Department of Energy funding. EEI is fully supportive of the Commission's smart grid Interim Rate Policy proposal, stating that it provides certainty and incentives for utilities to aggressively pursue Department of Energy funding.[209] Without interim rate policies, utilities may be less willing or unable to pursue Department of Energy funding. EEI encourages the Commission to issue its Interim Rate Policy before the Department's release of its June 17, 2009 final funding opportunity documents, and certainly prior to the July 29 project submission deadline. EEI supports rate recovery of upgrades to legacy systems and rate recovery of stranded costs resulting from smart grid upgrades.[210] EEI also states that expedited rate adjustments can be accomplished through formula rates.[211] SDG&E, PSEG, PG&E, and the New York Transmission Owners all filed comments in support of the Commission's Interim Rate Policy proposals.[212] None of the Investor Owned Utility commenters suggests that the Commission adopt a separate rate policy for investments supported by Department of Energy funds.

153. Second, the public power sector, energy consumer representatives, and state regulatory commissions oppose or have serious reservations about the Commission's policy proposal. NRECA and ELCON continue to oppose the Commission's Interim Rate Policy proposal generally. NRECA stresses that the Commission should strictly adhere to the just and reasonable requirements of the FPA.[213] NRECA's position is that rate adjustments related to smart grid investments can be processed expeditiously while still following requirements prescribed in the FPA. NRECA also states that cost recovery assurance for facilities not under construction is beyond the Commission's authority.[214] NRECA further states that a careful reading of the Department of Energy draft funding opportunity announcement does not condition grant award upon assurance of recovery of smart grid facilities in rates.[215] Similarly, ELCON states the Commission should proceed carefully and focus on its statutory obligation that utility costs are prudently incurred, and used and useful.[216] ELCON also reaffirms its opposition to the Commission's proposed Interim Rate Policy and states that special rate treatment for smart grid investments is contrary to the FPA.[217]

154. NARUC asserts, as does NRECA, that many if not most of the grant projects will occur on the distribution-retail side of the grid.[218] In consequence, the Commission should not provide funding guarantees for that portion of smart grid projects not covered by Department of Energy grants; State commissions must have the opportunity to review these projects. The Maryland Commission comments mirror NARUC's and NRECA's, opposing the Interim Rate Proposal generally and specifically opposing conditional rate recovery of projects it considers to be State jurisdictional.[219] The California Commission provided a copy of an order describing how it will review smart grid projects eligible for Department of Energy funds.[220]

155. AARP comments, while not explicitly opposing the Commission's Interim Rate Proposal, say that additional clarity should be provided to the smart grid cost approval process, including conducting a preliminary review of smart grid grant applications to determine whether they are complete.[221] Similarly, the Massachusetts Attorney General stresses that the Commission should have a project approval and monitoring process that focuses on cost containment.[222]

Commission Determination

156. Having considered the supplemental comments, the Commission sees no need for special procedures for rate recovery filings for projects that also receive Department of Energy grant funding. The Department of Energy does not require an assurance of rate recovery as a condition for grant funding. In fact, the most recent version of the Department of Energy's Smart Grid Grant Program states that applicants that do not yet have regulatory approval are eligible to

[206] ITC Companies Comments at 8–10.

[207] EEI Comments at 15.

[208] AARP Comments at 13–15.

[209] EEI Supplemental Comments at 4–5.

[210] *Id.* at 6.

[211] *Id.*

[212] SDGE Supplemental Comments at 1–2, PSEG Supplemental Comments at 1–2, PGE Supplemental Comments at 1, and NYISO Supplemental Comments at 3.

[213] NRECA Supplemental Comments at 4–5.

[214] *Id.* at 10–11.

[215] *Id.* at 8–9.

[216] ELCON Supplemental Comments at 3.

[217] *Id.* at 3.

[218] NARUC Supplemental Comments at 1.

[219] Maryland Commission Supplemental Comments at 1–2.

[220] CPUC Supplemental Comments at 1.

[221] AARP Supplemental Comments at 1–3.

[222] Massachusetts Commission Supplemental Comments at 3–4.

receive an award.[223] The more general concerns expressed by the commenters regarding the Interim Rate Policy have been addressed in previous sections of this Policy Statement.

III. Document Availability

157. In addition to publishing the full text of this document in the **Federal Register,** the Commission provides all interested persons an opportunity to view and/or print the contents of this document via the Internet through the Commission's Home Page (*http://www.ferc.gov*) and in the Commission's Public Reference Room during normal business hours (8:30 a.m. to 5 p.m. Eastern time) at 888 First Street, NE., Room 2A, Washington, DC 20426.

158. From the Commission's home page on the Internet, this information is available on eLibrary. The full text of this document is available on eLibrary in PDF and Microsoft Word format for viewing, printing, and/or downloading. To access this document in eLibrary, type the docket number excluding the last three digits of this document in the docket number field.

159. User assistance is available for eLibrary and the Commission's website during normal business hours from Federal Energy Regulatory Commission Online Support at 202–502–6652 (toll free at 1–866–208–3676) or e-mail at *ferconlinesupport@ferc.gov*, or the Public Reference Room at (202) 502–8371, TTY (202) 502–8659. E-mail the Public Reference Room at *public.referenceroom@ferc.gov*.

IV. Information Collection Statement

160. Office of Management and Budget's (OMB) regulations in 5 CFR 1320.11 require that it approve certain reporting and recordkeeping requirements (collections of information) imposed by an agency. Upon approval of a collection of information, OMB assigns an OMB control number and an expiration date. Entities subject to the filing requirements of the Interim Rate Policy will not be penalized for failing to respond to this collection of information unless the collection of information displays a valid OMB control number.

161. The Interim Rate Policy may affect the following existing data collection: Electric Rate Schedule and Tariff Filings (FERC–516) OMB Control No. 1902–0096.

162. The following burden estimate is based on the projected costs for the industry to implement revisions to satisfy the requirements of the Interim Rate Policy if and when rate recovery is sought under that policy:

Data collection	Number of respondents	Number of responses per respondent	Hours per response	Total number of hours
FERC–516	116	1	15	1740
Totals				1740

Total Annual Hours for Collection (Reporting and Recordkeeping, (if appropriate)) = 1740

163. Information Collection Costs: The Commission projects the average annualized cost for all respondents to be the following: [224]

	FERC–516
Total Annualized Costs	$261,000

164. The Commission sought comments on the Interim Rate Policy, among other things, in the Proposed Policy Statement. No comments were filed relating to the burden of reporting or complying with the requirements for seeking rate recovery pursuant to the Interim Rate Policy.

165. The Commission's Interim Rate Policy adopted herein is necessary to encourage the near-term deployment of smart grid systems capable of addressing upcoming challenges to the operation of the bulk-power system. Requiring the information specified in the Interim Rate Policy will encourage this near-term deployment while appropriately protecting customers from stranded costs and the electric system from potential cybersecurity threats.

166. These requirements conform to the Commission's goal for efficient information collection, communication, and management within the electric power industry. The Commission has assured itself, by means of its internal review, that there is specific, objective support for the burden estimates associated with the information requirements.

167. OMB regulations [225] require it to approve information collection requirements imposed by an agency. The Commission is submitting notification of the Interim Rate Policy to OMB. These information collections are voluntary and apply only to the extent that an entity seeks to benefit from the Interim Rate Policy.

Title: Electric Rate Schedule and Tariff Filings (FERC–516).

Action: Proposed collection.

OMB Control No.: 1902–0096.

Respondents: Business or other for profit.

Frequency of Responses: Estimated to be one time per respondent. The Interim Rate Policy will be in effect until relevant interoperability standards have been adopted through Commission rulemaking as provided by the EISA.

Necessity of the Information: The Interim Rate Policy will encourage near-term deployment of smart grid systems capable of helping to address the upcoming challenges to the operation of the bulk-power system associated with the EISA. The information to be collected is necessary to protect customers from stranded costs and the electric system from potential cybersecurity threats. The Commission will use the information in rate proceedings to review rate and tariff changes by public utilities, for general industry oversight, and to supplement the documentation used during the Commission's audit process.

168. The Commission is submitting to OMB a notification of these proposed collections of information. For information on the requirements, submitting comments on the collection of information and the associated burden estimates, including suggestions for reducing this burden, please contact the following:

Federal Energy Regulatory Commission, Attn: Michael Miller, Office of the Executive Director, 888 First Street, NE., Washington, DC 20426, Tel: (202)

[223] *See generally Recovery Act Smart Grid Grant Investment Program, http://www.grants.gov/search/search.do;jsessionid=fvXjKDLQNQG8kgxwx65nJs4rYhGgThcL9t7KzGZCkqFXSRpGpn9z!1215949849?oppId=46833&flag2006=false&mode=VIEW.*

[224] The total annualized costs for the information collection is $261,000. This number is reached by multiplying the total hours to prepare responses (1740 hours) by an hourly wage estimate of $150 (a composite estimate that includes legal, technical and support staff rates, $90+$35+$25). $261,000 = $150 × 1740.

[225] 5 CFR 1320.12.

502–8415/Fax: (202) 273–0873, E-mail: *michael.miller@ferc.gov*.

Or contact:

Office of Information and Regulatory Affairs, Office of Management and Budget, Washington, DC 20503, Attention: Desk Officer for the Federal Energy Regulatory Commission, (Re: OMB Control Nos. 1902–0096), Tel: (202) 395–4638, E-mail: *omb_submissions@omb.eop.gov.*

V. Effective Date and Congressional Notification

169. The Interim Rate Policy adopted in this Policy Statement is effective September 25, 2009. The Commission has determined, with the concurrence of the Administrator of the Office of Information and Regulatory Affairs of OMB, that this Policy Statement is a ''major rule'' as defined in section 351 of the Small Business Regulatory Enforcement Fairness Act of 1996.[226] The Commission will submit this Policy Statement to both houses of Congress and to the Government Accountability Office.

By the Commission.

Nathaniel J. Davis, Sr.,

Deputy Secretary.

APPENDIX A—LIST OF COMMENTERS AND SHORT NAMES

Abbreviation	Commenter
AARP	American Association of Retired Persons.
Academic Commenters	Michael C. Caramanis, Geoffrey Parker, and Richard D. Tabors.
Alcoa	Alcoa Inc. and Alcoa Power Generating Inc.
Allegheny Companies	Trans-Allegheny Interstate Line Company and Allegheny Power.
American Transmission	American Transmission Company LLC.
APPA	American Public Power Association.
APS	Arizona Public Service Company.
AT&T	AT&T, Inc.
AWEA	American Wind Energy Association.
B–D Research	Bochman-Danahy Research.
Black Hills Corp.	Black Hills Power, Black Hills/Colorado Electric Utility Company, LP d/b/a Black Hills Energy, and Cheyenne Light, Fuel and Power Company.
BP	BP Energy Company.
CAISO	California Independent System Operator Corporation.
California Commission	Public Service Commission of California.
CenterPoint	CenterPoint Energy Houston Electric, LLC.
Chamber	U.S. Chamber of Commerce.
Citizens Coalition	The Empowerment Center of Greater Cleveland, the Neighborhood Environmental Coalition, Consumers for Fair Utility Rates, and Cleveland Neighborhood Housing.
Comverge	Comverge, Inc.
CPower	CPower, Inc.
CURRENT	CURRENT Group, LLC.
DRSG Coalition	Demand Response and Smart Grid Coalition.
Duke	Duke Energy Corporation.
EEI	Edison Electric Institute.
ELCON	Electricity Consumers Resource Council.
EPSA	Electric Power Supply Association.
E.ON	E.ON U.S. LLC.
FirstEnergy	FirstEnergy Service Company on behalf of its affiliates American Transmission Systems, Incorporated, the Cleveland Electric Illuminating Company, Jersey Central Power and Light Company, Metropolitan Edison Company, Ohio Edison Company, Pennsylvania Electric Company, Pennsylvania Power Company, and the Toledo Edison Company.
GridSolar	GridSolar, LLC.
GridWise Alliance	GridWise Alliance.
GWAC	GridWise Architecture Council.
Ice Energy	Ice Energy, Inc.
Illinois Commission	Illinois Commerce Commission.
Indianapolis P&L	Indianapolis Power & Light Company.
ISO–NE	ISO New England Inc.
ITC Companies	International Transmission Company d/b/a ITC*Transmission,* Michigan Electric Transmission Company, LLC, and ITC Midwest LLC.
James E. Miller	James E. Miller.
Kansas Commission	Kansas Corporation Commission.
Maryland Commission	Public Service Commission of Maryland (supplemental comments only).
Maryland Counsel	Maryland Office of People's Counsel.
Massachusetts Attorney General	Massachusetts Office of Attorney General.
Michigan Commission	Michigan Public Service Commission.
Midwest ISO	Midwest Independent Transmission System Operator, Inc.
Midwest ISO Transmission Owners	Midwest ISO Transmission Owners.
NARUC	National Association of Regulatory Utility Commissioners.
National Grid	National Grid USA.

[226] *See* 5 U.S.C. 804(2) (2007).

APPENDIX A—LIST OF COMMENTERS AND SHORT NAMES—Continued

Abbreviation	Commenter
Natural Gas Commenters	Natural Gas Supply Association, Interstate Natural Gas Association of America, and Independent Petroleum Association of America.
NEM and Intelligent Energy	National Energy Marketers Association and Intelligent Energy.
NEMA	National Electrical Manufacturers Association.
NERC	North American Electric Reliability Corporation.
New York Transmission Owners	Central Hudson Gas & Electric Corporation, Consolidated Edison Company of New York, Inc., New York Power Authority, New York State Electric & Gas Corporation, Orange and Rockland Utilities, Inc., and Rochester Gas and Electric Corporation (supplemental comments only).
North Carolina Agencies	North Carolina Public Utilities Commission and Public Staff–NC Utilities Commission.
NRECA	National Rural Electric Cooperative Association.
NRG Companies	NRG Energy, Inc. and Reliant Energy Retail Services, LLC.
NYISO	New York Independent System Operator.
Ohio Commission	Public Utilities Commission of Ohio.
Ohio Counsel	Office of the Ohio Consumers' Counsel.
Ohio Partners	Citizen Power, Cleveland Housing Network, Edgemont Neighborhood Coalition of Dayton, the Empowerment Center of Greater Cleveland, the Energy Project, the National Consumer Law Center, the Neighborhood Environmental Coalition, and Ohio Partners for Affordable Energy.
Open Secure Systems	Open Secure Energy Control Systems, LLC.
PG&E	Pacific Gas and Electric Company.
PNM	Public Service Company of New Mexico.
PSEG Companies	PSEG Energy Resources & Trade LLC, Public Service Electric and Gas Company, PSEG Power LLC, PSEG Global LLC.
Public Interest Organizations	Project for Sustainable FERC Energy Policy, Conservation Law Foundation, Natural Resources Defense Council, The Commons, Union of Concerned Scientists, and Western Grid Group.
SDG&E	San Diego Gas & Electric Company.
Silver Spring Networks	Silver Spring Networks.
Southern	Southern Company Services, Inc.
Springfield	Springfield Utility Board.
TANC	Transmission Agency of Northern California.
TAPS	Transmission Access Policy Study Group (supplemental comments only).
TVA	Tennessee Valley Authority.
Valley Group	The Valley Group.
Wal-Mart	Wal-Mart Stores, Inc.
Xcel	Xcel Energy Services Inc.

[FR Doc. E9–17624 Filed 7–24–09; 8:45 am]

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Federal Register

Monday,
July 27, 2009

Part III

Department of Transportation

National Highway Traffic Safety Administration

49 CFR Part 571

Federal Motor Vehicle Safety Standards; Air Brake Systems; Final Rule

DEPARTMENT OF TRANSPORTATION

National Highway Traffic Safety Administration

49 CFR Part 571

[Docket No. NHTSA–2009–0083]

RIN 2127–AJ37

Federal Motor Vehicle Safety Standards; Air Brake Systems

AGENCY: National Highway Traffic Safety Administration (NHTSA), DOT.

ACTION: Final rule.

SUMMARY: This document amends the Federal motor vehicle safety standard on air brake systems to improve the stopping distance performance of truck tractors. The rule requires the vast majority of new heavy truck tractors to achieve a 30 percent reduction in stopping distance compared to currently required levels. For these heavy truck tractors (approximately 99 percent of the fleet), the amended standard requires those vehicles to stop in not more than 250 feet when loaded to their gross vehicle weight rating (GVWR) and tested at a speed of 60 miles per hour (mph). For a small number of very heavy severe service tractors, the stopping distance requirement will be 310 feet under these same conditions. In addition, this final rule requires that all heavy truck tractors must stop within 235 feet when loaded to their ''lightly loaded vehicle weight'' (LLVW).

The purpose of these amendments is to reduce the number of fatalities and injuries associated with crashes involving tractor-trailer combinations and other vehicles. In addition, we anticipate that this rule will prevent a substantial amount of property damage through averting or lessening the severity of crashes involving these vehicles. Once all subject heavy truck tractors on the road are equipped with enhanced braking systems, we estimate that annually, approximately 227 lives will be saved and 300 serious injuries will be prevented. In addition, this final rule is expected to prevent over $169 million in property damage annually, an amount which alone is expected to exceed the total cost of the rule.

There are a number of simple and effective manufacturing solutions that vehicle manufacturers can use to meet the requirements of this final rule. These solutions include installation of enhanced drum brakes, air disc brakes, or hybrid disc/drum systems. We note that currently a number of vehicles in the commercial fleet already utilize these improved braking systems and already realize performance that would meet the requirements of the amended standard.

DATES: *Effective Date:* This final rule is effective November 24, 2009.

Compliance Date: Three-axle tractors with a GVWR of 59,600 pounds or less must meet the reduced stopping distance requirements specified in this final rule by August 1, 2011. Two-axle tractors and tractors with a GVWR above 59,600 pounds must meet the reduced stopping distance requirements specified in this final rule by August 1, 2013. Voluntary early compliance is permitted before those dates.

Petitions for Reconsideration: If you wish to submit a petition for reconsideration of this rule, your petition must be received by September 10, 2009.

ADDRESSES: Petitions for reconsideration should refer to the docket number above and be submitted to: Administrator, Room W42–300, National Highway Traffic Safety Administration, 1200 New Jersey Avenue, SE., Washington, DC 20590.

See the **SUPPLEMENTARY INFORMATION** portion of this document (Section VI; Rulemaking Analyses and Notice) for DOT's Privacy Act Statement regarding documents submitted to the agency's dockets.

FOR FURTHER INFORMATION CONTACT: For non-legal issues, you may call Mr. Jeff Woods, Office of Crash Avoidance Standards (Telephone: 202–366–6206) (Fax: 202–366–7002).

For legal issues, you may call Mr. Ari Scott, Office of the Chief Counsel (Telephone: 202–366–2992) (Fax: 202–366–3820).

You may send mail to both of these officials at National Highway Traffic Safety Administration, 1200 New Jersey Avenue, SE., Washington, DC 20590.

SUPPLEMENTARY INFORMATION:

Table of Contents

I. Executive Summary

a. Background and Safety Problem Addressed by the Regulation

On March 10, 1995, NHTSA published three final rules [1] as part of a comprehensive effort to improve the braking ability of medium and heavy vehicles.[2] While the major focus of that effort was to improve directional stability and control through adoption of antilock brake system (ABS) requirements, the 1995 rules also reinstated stopping distance requirements for medium and heavy vehicles, replacing earlier requirements that had been invalidated in 1978 by the United States Court of Appeals for the 9th Circuit due to reliability issues (*see PACCAR* v. *NHTSA,* 573 F.2d 632 (9th Cir. 1978)).

Currently, stopping distance requirements under FMVSS No. 121, *Air Brake Systems*, vary according to vehicle type. Vehicles are tested under three different test conditions: (1) Loaded-to-GVWR; (2) unloaded; and (3) emergency braking conditions. Under the loaded-to-GVWR condition, when stopping from 60 mph, air-braked buses must stop within a distance of 280 feet, air-braked single unit trucks must stop within 310 feet, and air-braked truck tractors must comply within 355 feet.[3] Under the unloaded [4] condition at 60 mph, air-braked buses are required to stop within 280 feet, while single-unit trucks and truck tractors must stop within 335 feet. Under the emergency brake [5] 60 mph requirements, air-braked buses and single-unit trucks must stop within 613 feet, while tractors must stop within 720 feet.

Data from the agency's 2000–2002 GES database and the agency's 2004–2006 FARS database indicate that the involvement of large trucks in fatal and injury-producing crashes has slightly declined, while vehicle-miles-traveled (VMT) has increased. However, because the number of registered heavy vehicles has increased, the net effect is that the total number of crashes remains high. According to the 2006 data: [6]

- 385,000 large trucks were involved in traffic crashes in the U.S.
- 4,732 large trucks were involved in fatal crashes, resulting in 4,995 fatalities (12 percent of all highway fatalities reported in 2006). Seventy-five percent of the fatally injured people were occupants of another vehicle; 16 percent were truck occupants, and 8 percent were nonoccupants.
- 106,000 people were injured in crashes involving large trucks. Seventy-six percent of the injured people were occupants of another vehicle; 22 percent were truck occupants, and 2 percent were nonoccupants.

According to a report [7] published by the Analysis Division of the Federal Motor Carrier Safety Administration (FMCSA), the fatality rate for large truck crashes was 66 percent higher than the fatality rate for crashes involving only passenger vehicles (defined as a car or light truck) in 2005. When the FMCSA report considered combination trucks (*e.g.*, tractor and trailer combinations) separately, the crash fatality rate was nearly double that of passenger vehicles. Conversely, the crash fatality rate for single-unit trucks was approximately 23 percent higher than for passenger vehicles. The FMCSA data indicate that for all types of crashes involving large trucks, those involving trucks with a GVWR over 26,000 pounds have the highest rate of crash involvement.

It is expected that in most cases reductions in stopping distances for large trucks will result in a reduction of the impact velocity, and hence the severity of a crash. In some cases, reduced stopping distances will prevent a crash from occurring entirely (*i.e.*, a vehicle with a reduced stopping distance will stop short of impacting another vehicle). Based on the crash data in the June 2005 NHTSA report titled ''An Analysis of Fatal Large Truck Crashes,'' [8] improvements in stopping distance will provide benefits in the following types of crashes: Rear-end, truck striking passenger vehicle; passenger vehicle turned across path of truck; and straight path, truck into passenger vehicle. It is estimated that these types of crashes account for 26 percent of fatalities involving large trucks, or 655 fatalities annually. In addition, it is possible that some head-on collisions could be reduced in severity, since improvement in braking performance could reduce impact speeds.

NHTSA has been exploring the feasibility of reducing the stopping distance under FMVSS No. 121 for heavy air-braked vehicles by 20–30 percent based on testing of current vehicles. We have initially focused on air-braked truck tractors, since the available crash data indicate that these vehicles are the ones most frequently involved in fatal truck crashes. By promulgating a more stringent requirement for air-braked heavy tractor stopping distances, it is our intent to reduce fatalities and injuries relating to this class of vehicles. It is our belief that development of advanced air disc brakes, enhanced larger capacity drum brakes, and advanced ABS, offer cost-effective means to reduce heavy truck stopping distances and to reduce injuries and damage from large tractor crashes effectively.

b. Notice of Proposed Rulemaking

On December 15, 2005, NHTSA published a Notice of Proposed Rulemaking (NPRM) in the **Federal Register** (70 FR 74270) [9] proposing to amend FMVSS No. 121 so as to reduce

[1] 60 FR 13216 (Dockets #92–29 and 93–69), 60 FR 13287 (Docket #93–06), March 10, 1995.

[2] Medium and heavy weight vehicles are hydraulic-braked vehicles over 10,000 pounds GVWR, and all vehicles equipped with air brakes; hereinafter referred to collectively as heavy vehicles.

[3] For heavy truck tractors (tractors), the current stopping distance test in the loaded-to-GVWR condition is conducted with the tractor coupled to an unbraked control trailer, with weight placed over the fifth wheel of the tractor, and a 4,500 pound load on the single axle of the trailer. This test method isolates the braking performance of the tractor so that only that system's performance is evaluated. The performance of a tractor in an FMVSS No. 121 stopping distance test does not directly reflect the on-road performance of a tractor/semi-trailer combination vehicle that has braking at all wheel positions.

[4] In the unloaded condition, vehicles are tested at lightly loaded vehicle weight (LLVW).

[5] Emergency brake system performance is tested with a single failure in the service brake system of a part designed to contain compressed air or brake fluid.

[6] *See Traffic Safety Facts 2006—Large Trucks,* National Center for Statistics and Analysis (NCSA), report number DOT HS 810 805, *http://www.nrd.nhtsa.dot.gov/Pubs/810805.pdf.* The NCSA report uses the term ''large trucks,'' which in practical terms describes the same segment of the vehicle population as ''heavy vehicles.''

[7] *Large Truck Crash Facts 2005* (report number FMCSA–RI–07–046, *http://www.fmcsa.dot.gov/facts-research/research-technology/report/Large-Truck-Crash-Facts-2005/Large-Truck-Crash-Facts-2005.pdf.*

[8] DOT HS 809 569, *http://www.nrd.nhtsa.dot.gov/Pubs/809-569.pdf*; Docket # NHTSA–2005–21462–5 via Web site references.

[9] Docket No. NHTSA–2005–21462.

the required stopping distances for the loaded and unloaded service brake distances and emergency brake distances for truck tractors by 20 to 30 percent. These amendments would apply to nearly all of the 130,000 tractors manufactured annually. NHTSA also proposed a lead time of two years to implement these amendments, given that vehicles tested by the agency and industry were able to meet the proposed requirements without modifications other than the use of improved foundation brakes. Finally, NHTSA indicated that it was considering revising the dynamometer testing procedures to ensure adequate braking capability for trailer foundation brakes.

The NPRM included figures from the accompanying Preliminary Regulatory Impact Analysis (PRIA) indicating that enhanced brake system specifications would result in a range of costs and benefits based on the specific requirements and the choices made to reach those requirements. We note that in some instances, the cost estimates in the PRIA do not correspond to the numbers in the FRIA or those cited in the Final Rule. This is because NHTSA has updated its cost estimates during the interim period, and the FRIA uses 2007 dollars.

The NPRM also discussed the results of testing conducted at NHTSA's Vehicle Research and Test Center (VRTC), as well as data from Radlinski and Associates provided to NHTSA. These data strongly suggested that with improved foundation brakes, typical three-axle tractors [10] would be able to meet the proposed requirements for reduced stopping distance, although the Radlinski data did not include data on two-axle or severe service [11] tractors. The data also indicated that some vehicles in service today would meet the enhanced requirements with no additional modifications.

NHTSA requested comments on a number of subjects in the NPRM. Comments were requested generally on the proposal to reduce stopping distances 20–30 percent and on the costs of the proposal. Comments were also requested on a variety of specific subjects, such as the possible changes in dynamometer testing procedures, the application of Advanced ABS and Electronically Controlled Braking Systems (ECBS), and the lead time that would be required to implement the proposed changes. Finally, NHTSA requested comments on the VRTC and Radlinski testing, as well as information from vehicle manufacturers regarding vehicle modifications (other than to foundation brakes) that might be required to meet the proposal's enhanced braking specifications.

c. Summary of Public Comments

Commenters brought up a variety of issues in response to the NPRM. Most commenters supported NHTSA's proposal to reduce the stopping distance requirements for heavy truck tractors. In general, safety organizations recommended adopting the 30 percent reduction in stopping distances for all heavy truck tractors. On the other hand, truck manufacturing groups recommended that the agency reduce the stopping distance requirements by 20–25 percent, and limit the scope of the reductions to standard three-axle tractors. In their comments, manufacturers cited the increased costs and complexity of upgrading to the stricter stopping distance requirements, as well as potential problems that could be encountered with upgrading the requirements for two-axle and severe service tractors. Many commenters also discussed the vehicle testing NHTSA cited in the NPRM, along with providing independent test and cost-benefit data.

Other aspects of Standard No. 121 mentioned in the NPRM received comments as well. Several commenters recommended against making any changes to the emergency braking requirements in the Standard. Regarding brake dynamometer specifications, some commenters also recommended that no changes be made. Several commenters suggested that the brake burnish procedure could be returned to an older procedure, known as a ''hot burnish,'' that existed before 1993. Finally, attention was called to the possible ramifications of the stopping distance changes for issues like cargo securement and brake power at lower speeds.

d. Requirements of the Final Rule

After careful consideration of the public comments on the NPRM, we are promulgating this final rule, which amends the requirements of FMVSS No. 121 by reducing the specified stopping distance for the vast majority of heavy truck tractors by 30 percent. For a small number of very heavy, severe service tractors, the stopping distance requirement is reduced by a smaller amount. The reduction applies to service brake stopping distance but does not, however, apply to emergency braking distances.

For heavy trucks in the loaded-to-GVWR condition, the stopping distance requirements from an initial speed of 60 mph are as follows:

- A tractor with two or three axles and a GVWR of 70,000 pounds or less must stop within 250 feet.
- A tractor with three axles and a GVWR greater than 70,000 pounds must stop within 310 feet.
- A tractor with four or more axles and a GVWR of 85,000 pounds or less must stop within 250 feet.
- A tractor with four or more axles and a GVWR greater than 85,000 pounds must stop within 310 feet.[12]

For heavy trucks in the unloaded condition, the agency is reducing the specified stopping distance from 60 mph by 30 percent, to a 235-foot requirement. This requirement applies to all tractors, including those severe service tractors for which the loaded-to-GVWR stopping distance requirement has been set at 310 feet.

Stopping distance requirements for heavy air-braked tractors are provided in Tables I through III (*See* Section III). The tables list the following information:

- Table I lists the requirements and details the explanation for stopping distance requirements in the loaded-to-GVWR condition for two- and three-axle tractors with a GVWR of 70,000 pounds or less, and tractors with four or more axles with a GVWR of 85,000 pounds or less.
- Table II lists the requirements and details the explanation for stopping distance requirements in the loaded-to-GVWR condition for three-axle tractors with a GVWR greater than 70,000 pounds, and tractors with four or more axles and a GVWR greater than 85,000 pounds.
- Table III lists the stopping distance requirements and details the explanation for all tractors in the unloaded condition.

In addition, to reduce a possible source of test variability, the agency is adding a specification to the unloaded condition testing requirement in FMVSS No. 121 that the fuel tank is filled to 100 percent of capacity at the beginning of testing and may not be less than 75 percent of capacity during any part of the testing.

Finally, it should be noted that there were several changes suggested in the NPRM that we are not incorporating into this final rule amending FMVSS No. 121. These include:

[10] As explained below, ''typical'' three-axle tractors have a GVWR less than or equal to 59,600 pounds.

[11] As explained below, ''severe service'' tractors refer to tractors with a GVWR over 59,600 pounds.

[12] We note that tractors with any axle with a GAWR of 29,000 pounds or greater will continue to be excluded from FMVSS No. 121 requirements in accordance with paragraph S3.

- There is no change in the emergency brake stopping distance requirement.
- There are no changes to the dynamometer test requirements.

e. Lead Time

After carefully considering the public comments on the NPRM, the agency has decided to tie the lead time to the specific type of heavy truck in light of the anticipated challenges in making the necessary modifications. For the reasons discussed below, we have decided to provide the majority of three-axle tractors with two years lead time from the date of today's final rule, and we are providing two-axle and severe service tractors with four years lead time.

NHTSA's test data indicate that for typical three-axle tractors with improved brake systems (*i.e.,* enhanced drum brakes or air disc brakes), compliance with the new stopping distance requirements can be readily achieved. Therefore, the agency is specifying a compliance date that is two years from the date of publication of the final rule for typical three-axle tractors. ''Typical three-axle'' tractors are defined as having three axles and a GVWR less than or equal to 59,600 pounds.

Available test data also indicate that two-axle tractors with improved brake systems can meet a 250-foot loaded-to-GVWR stopping distance requirement. However, we believe additional lead time is needed for manufacturers to evaluate new brake systems more fully to ensure compatibility with existing trailers and converter dollies when used in multi-trailer combinations, and to minimize the risk of vehicle stability and control issues. With regard to severe service tractors, available test data and analysis indicate that the 250-foot and 310-foot loaded-to-GVWR stopping distance requirements, depending on the vehicle's GVWR, are achievable. However, only limited development work has been performed on these vehicles, and additional lead time is needed for manufacturers to complete testing and validation of new brake systems for these vehicles. In light of these facts, NHTSA has decided that additional lead time is necessary for all two-axle tractors, and severe service tractors with a GVWR greater than 59,600 pounds. Accordingly, for those vehicles the compliance date for today's final rule is four years from the date of publication.

f. Specific Decisions and Differences Between the Final Rule and the Notice of Proposed Rulemaking

In the NPRM, NHTSA discussed a number of potential actions intended to improve vehicle safety by reducing heavy air-braked tractor stopping distance through amendments to FMVSS No. 121. The available data showed that it was both technically feasible and cost-effective to require improved foundation brakes on air-braked tractors that could achieve a 20–30 percent reduction in stopping distance. The main differences between the NPRM and the final rule include decisions to: (1) Specify a 30 percent reduction in stopping distance for the vast majority of tractors, with a smaller reduction for a small number of very heavy severe service tractors; (2) continue the standard's emergency braking requirements without change; (3) alter the stopping distance requirements for reduced speed tests to account for brake system reaction time and the available tire-road friction; and (4) extend the effective date for compliance by two-axle and severe service tractors. The rationales for these decisions are discussed briefly below, followed by a more complete explanation later in this document.

In the NPRM, NHTSA proposed reducing the required stopping distance for heavy air-braked tractors by 20–30 percent. This range was based on available test results and cost analyses (described below). In the final rule, NHTSA is requiring a 30 percent reduction in the required stopping distance for the vast majority of tractors. We note that the agency's final regulatory impact analysis (FRIA) estimated that greater safety benefits would be attained with a 30-percent reduction in stopping distance requirements compared to the benefits estimated for a 20-percent reduction. It estimated that more than twice as many benefits in fatalities and serious injuries prevented are projected for the 30-percent case versus the 20-percent case. The differential in estimated property damage reductions is even greater, with approximately five times the property damage prevented for the 30-percent case versus the 20-percent case. NHTSA testing and analysis demonstrated that nearly all two-axle and three-axle tractors will be able to meet the 30 percent reduction by using improved foundation brakes that are readily available. For a small percentage of severe service tractors (estimated to be approximately one percent), namely three-axle tractors with a GVWR over 70,000 pounds and tractors with four or more axles and a GVWR over 85,000 pounds, we concluded that a 30 percent reduction is not currently practicable. For those vehicles, the stopping distance is reduced by 13 percent, from the currently mandated level to the level of similar single-unit trucks.

While the NPRM proposed reducing emergency brake stopping distances by 20–30 percent, we decided not to adopt this part of the proposal. Comments received from the Truck Manufacturers Association (TMA) indicated that in order to meet the agency's proposed emergency brake stopping distance requirements, manufacturers would need to modify the ABS algorithms to allow more drive wheel lockup. This modification could be detrimental to vehicle stability and control. NHTSA considered this, as well as the relative rarity of a crash-imminent situation during a brake failure, and decided to maintain the status quo.

In the final rule, NHTSA is also altering the stopping distance requirement for speeds less than 60 mph from the original figures cited in the NPRM. Several commenters argued that the reduced stopping distance values in the proposed Table V of FMVSS No. 121 did not take into account the brake system reaction time and average deceleration. In the final rule, the stopping distances for speeds less than 60 mph have been adjusted to take these factors into consideration.

Finally, the final rule provides additional lead time for several types of tractors to comply with the reduced stopping distance requirements. The NPRM had proposed a two-year lead time for all tractors to meet the reduced stopping requirements. With regards to typical three-axle tractors (three-axle tractors with a GVWR of 59,600 pounds or less), the available test data showed that compliance to the new stopping distance requirements can be readily achieved without the need to make significant modifications to other vehicle systems. As stated above, however, the agency believes that additional lead time is needed for manufacturers to develop and evaluate improved braking systems more fully for two-axle and severe service tractors. Therefore, the lead time has been extended for those types of vehicles by an additional two years.

g. Costs and Benefits

A 30 percent reduction in required stopping distance will realize significant benefits, both in terms of injuries and fatalities prevented, as well as in property damage prevented. The agency's analysis in the FRIA estimates that, with a 30 percent reduction in stopping distance requirements, 227 fatalities and 300 serious injuries will be prevented. In addition, it is estimated that a 30 percent reduction in stopping distance will realize significant

reductions in property damage. According to the FRIA, using a 3 percent discount rate, $205M of property damage will be prevented annually. Using a 7 percent discount rate, the figure is $169M.

The range of figures in terms of net costs are based on what types of foundation brakes, disc brakes or enhanced drum brakes, are used to meet the new stopping distance requirements. The figures are derived based on an average annual production of about 130,000 truck tractors (82 percent of which are typical three-axle tractors, ten percent two-axle tractors, and eight percent severe service tractors). Each typical three-axle tractor contains one steer axle and two drive axles, as do most severe service tractors. Each two-axle tractor contains one steer axle and one drive axle. Therefore, the agency estimates that in total, the final rule will require the upgrading of 130,000 steer axle brakes and 247,000 drive axle brakes. In order to compute the total cost of complying with the reduced stopping distance rule, the agency calculated the number of axles that will need to be upgraded with improved foundation brakes, and multiplied that number by the cost of the brake. The agency estimated the cost of enhanced drum brakes for the steer axle at $85, and for drive axles at $65. The agency estimated the cost of disc brakes to be $500 per axle at all wheel positions.

Because the agency is not certain how truck manufacturers will choose to comply with the final rule, using the above figures, the agency created a range of costs of compliance. The most expensive means of compliance would be to use a $500 disc brake at all wheel positions, while the least expensive means of compliance would be to use enhanced drum brakes at all wheel positions. The FRIA estimates that the incremental cost to add disc brakes to all wheel positions would be $1,475 per tractor ($192M total cost), while the incremental cost to add enhanced drum brakes would be $211 ($27M total cost). One commenter (Freightliner) provided cost information, stating that the cost of disc brakes would be $1,627 for a three-axle tractor and $963 for a two-axle tractor, while the cost of drum brakes for a three-axle tractor would be $222. In addition, the commenter stated that development and manufacturing costs would need to be added, although it did not elaborate on what these costs would be. The agency notes that these figures are very similar to its own estimates.

NHTSA testing indicated that for standard three-axle tractors, it is likely enhanced drum brakes at the steer axle and drive axle positions will enable the tractors to meet a 250-foot stopping distance requirement in FMVSS No. 121. For two-axle tractors and severe service tractors, it is likely that disc brakes would be required at all wheel positions. Considering that standard three-axle tractors comprise roughly 82 percent of all tractors, it seems likely that the total costs will be skewed toward the lower end of the range. In the FRIA, the agency estimates that the incremental average cost per tractor, given these assumptions, will be $413 per vehicle ($54M total). NHTSA notes that this figure is substantially lower than the lowest figure in the range of estimated savings in property damage ($169M).

The FRIA estimates that the net cost per equivalent life saved (NCELS) will range from $108,000 to net benefits based on property damage savings alone (that is, the costs of implementing this final rule will be less than the costs saved in damaged property, irrespective of the injuries and fatalities prevented). The high figure ($108,000 NCELS) is derived by taking the highest estimated cost figure and the lowest estimated property damage prevented. Conversely, the low figure (net benefits) is derived from using the low cost estimate and the high benefits estimate.

II. Background

a. Existing Brake Technologies for Heavy Air-Braked Trucks

The relevant brake technologies at issue in this rulemaking can be divided into two categories, S-cam drum brakes (drum brakes) and air disc brakes (disc brakes).

The most common type of foundation brake used in air brake systems for heavy vehicles is the S-cam brake. This is a leading/trailing type of brake with fixed pivot type shoes. Upon brake application, air pressure enters the brake chamber causing the diaphragm to push the pressure plate, which in turn applies a force to the end of the brake slack adjuster. This force creates a torque on the camshaft, and rotates the camshaft to which the S-cam is attached. The camshaft head, which is S-shaped, forces the brake shoes against the surface of the brake drum to create the retardation force for braking. Enhanced S-cam drum brakes are essentially larger and wider versions of standard S-cam drum brakes. On the steer axle, for example, the diameter of the brake drum is 16.5 inches versus 15 inches for the standard steer axle drum, and this produces more braking torque. Typically the enhanced steer axle drum brake lining is 5 inches wide instead of the standard steer axle brake lining width of 4 inches. On the drive axles, both standard and enhanced S-cam drum brakes use a 16.5 inch diameter drum, while the standard lining width is 7 inches versus 8 or 8.625 inches for the enhanced drum brake. The increased width of the lining and brake drum provides greater thermal capacity, so that enhanced S-cam drum brakes operate cooler, contributing to longer life, and they are also less prone to fade during high-speed stops.

Air disc brakes are also used on commercial vehicles, but are still used in relatively small numbers in the U.S. A disc brake is basically a C-clamp with the retardation force applied by friction pads that squeeze the brake rotor mounted between them. All air disc brake systems are composed of a rotor, brake linings, a caliper, an adjusting mechanism, and an air brake chamber, among other parts, and there are many different designs to accomplish their function. Disc brakes offer a number of favorable performance characteristics including linear torque output and high resistance to fade, although they are substantially more expensive than drum brakes.

b. Current Requirements of FMVSS No. 121

Under the current FMVSS No. 121 requirements, most truck tractors are required to stop within 355 feet, when tested at 60 mph in the loaded-to-GVWR condition while pulling an unbraked control trailer. Standard No. 121 also requires that truck tractors stop within 335 feet, when tested at 60 mph in the unloaded condition. Finally, the standard requires an emergency brake stopping distance of 720 feet, when tested at 60 mph in the unloaded condition. Currently, the standard does not specify different requirements for different vehicles based on their number of axles or on their GVWR, except that vehicles with a GAWR (gross axle weight rating) of 29,000 pounds or more are exempt from the standard, as are certain vehicles with a GVWR greater than 120,000 pounds.

Before testing, brakes are burnished according to the procedure specified in paragraph S6.1.8 of the standard. The tractor is coupled to an unbraked control trailer and loaded so that the combined weight of the tractor and trailer equals the GVWR of the tractor. Thermocouples are installed in the brake linings to measure the brake temperatures. The burnish consists of 500 snubs (reductions in speed) from 40 mph to 20 mph using the service brakes at a deceleration rate of 10 ft/sec^2;. Each subsequent snub is conducted at a distance interval of 1 mile from the

point of the beginning of the previous snub.

c. Summary of the NPRM

On December 15, 2005, NHTSA published an NPRM in the **Federal Register** (70 FR 74270) [13] proposing to amend FMVSS No. 121 to reduce the required stopping distance for the loaded and unloaded service brake conditions and emergency brake conditions for heavy truck tractors by 20 to 30 percent. NHTSA proposed a lead time of two years to implement this requirement, given that vehicles tested by the agency and private industry were able to meet the proposed requirements without modifications other than improved foundation brakes. In addition, NHTSA suggested that it was considering revising dynamometer testing procedures to ensure adequate braking capability for trailer foundation brakes.

In the NPRM, NHTSA stated that it believed the reason that many truck operators had not progressed to readily-available, more advanced brake systems was because truck operators did not have this cost savings information available. Further, the proposal stated that truck operators are cost-sensitive in terms of the initial purchase price of the vehicle and are reluctant to add different types and sizes of brake components to their specifications. The agency noted that the proposed requirements would result in net cost savings for truck operators if the savings resulting from decreased property damage are taken into consideration.

NHTSA also provided data from its Vehicle Research and Test Center (VRTC) to compare the performance of air-braked tractors and trailers equipped with a variety of brake system configurations. These data indicated that the tested vehicles would be able to comply with a 20–30 percent reduction in the stopping distance requirements with modifications only to the foundation brake systems. Testing was also conducted on heavy trucks with a failed primary reservoir in order to generate data on emergency stopping distances; the results indicated that the same modifications that improved service brake stopping distances also improved emergency braking stopping distances.

Industry data provided by Radlinski and Associates (Radlinski), commissioned by two brake lining manufacturers, were also cited in the NPRM. These data related to standard three-axle tractors equipped with enhanced, larger-capacity S-cam drum brakes at all axle positions. These data indicated that the tractors were able to meet the 30 percent reduced stopping distance requirement without disc brakes, and the braking performance in these tests exceeded that of NHTSA's own tests at the VRTC, in some cases even when disc brakes were applied at all positions.

In the NPRM, NHTSA requested comments on a variety of topics to further the agency's understanding of the ramifications of various measures for improving braking systems. As a preliminary matter, comments were solicited on the safety need for improved braking distances. Comments were also requested on the implications of improving stopping distances by 20 percent and 30 percent, including necessary lead time, needed vehicle modifications, and issues regarding brake balance. The agency also sought comments on the Radlinski data, as well as information on developments in electronically-controlled braking systems (ECBS) and advanced ABS, and how these systems could benefit heavy vehicle safety.

d. Summary of Public Comments on the NPRM

NHTSA received 27 comments on the December 2005 NPRM, from heavy vehicle manufacturers (International Truck and Engine Corporation (International); Freightliner LLC (Freightliner)), brake suppliers (Arvin Meritor; Meritor WABCO (Meritor); WABCO Vehicle Control Systems (WABCO); Honeywell Bremsbelag GmbH (Honeywell); Bendix Commercial Systems/Spicer Foundation Brake (Bendix); Haldex Brake Products Corporation (Haldex); Brake Pro), industry organizations and associations (Truck Manufacturers Association (TMA); Heavy Duty Brake Manufacturers Council (HDBMC); American Trucking Associations (ATA); Owner Operators Independent Drivers Association (OOIDA); National Automobile Dealers Association (NADA)), automobile safety advocates (Insurance Institute for Highway Safety (IIHS); Advocates for Highway and Auto Safety (Advocates)), a foreign government (People's Republic of China), and concerned organizations and individuals (John W. Klegey; Automotive Safety Office (ASO); Roger L. Adkins; Graham Lower; Timothy Larrimore; Anonymous; University of Washington; Roger Sauder). All of the comments on the NPRM can be reviewed in Docket No. NHTSA–2005–21462. Commenters expressed a range of views, with vehicle manufacturers, brake suppliers, and trade associations generally supporting the NPRM. Advocacy groups generally recommended that the agency adopt a standard at the stricter end of the range (toward 30 percent) for all tractors, while most of the trucking industry comments recommended that NHTSA reduce the stopping distances by 20–25 percent (instead of 20–30 percent), and only for typical three-axle tractors. As part of its comments, TMA provided a crash data analysis indicating that typical three-axle tractors comprise 82 percent of tractor production and are involved in 91 percent of fatal crashes involving tractors.

The following overview of the public comments reflects the key issues raised by the commenters, including the safety and cost benefits of reducing stopping distances, recommended percentages for reducing stopping distances, as well as issues of technical feasibility and stability that arise from increasing brake torque. Other issues were raised as well, including reduced stopping distances in the unloaded vehicle condition, emergency brake stopping distances, maintenance issues, recommended dynamometer testing changes, and brake burnish procedures. Comments were also received in response to NHTSA's questions about the validity and applicability of the Radlinski testing data, the impact of ECBS and advanced ABS, and on the margin of compliance for testing in accordance with FMVSS No. 121. A few commenters recommended that the government undertake additional, cooperative studies with industry in order to gather data for two-axle and severe service tractors. Finally, comments were provided on the implications of reduced stopping distance for reduced test speed stopping distance testing and for issues of cargo securement under high-deceleration conditions.

Although the agency also requested comments on trailer stopping distance test data and efforts to improve the braking performance of single-unit trucks, few comments were received regarding those issues. Likewise, only a small number of comments addressed the agency's requests for information about the costs of improved braking systems, as well as any increase in weight. The issues raised in the public comments are discussed in further detail and addressed below in Section III, *The Final Rule and Response to Public Comments.*

General Need To Reduce Stopping Distance Performance for Tractors

Support for NHTSA's proposal to reduce the stopping distance performance of heavy truck tractors was

[13] Docket No. NHTSA–2005–21462.

nearly universal. Highway safety advocacy organizations, such as Advocates and IIHS, supported the largest reduction of stopping distances within the range proposed by NHTSA (*i.e.,* a 30 percent reduction from the current requirements of FMVSS No. 121 for all tractors). Most of the trucking industry comments favored a 25 percent reduction in stopping distances, but those commenters recommended limiting the new requirements to standard three-axle tractors, which account for over 80 percent of tractor production. It should be noted that some industry commenters suggested reducing stopping distances by only 20 percent, the lowest reduction proposed by NHTSA.

Comments on the Proposal To Reduce Service Brake Stopping Distance Performance by 20–30 Percent in the Loaded-to-GVWR Condition

The majority of commenters fell into two groups, those who supported 30 percent reductions in stopping distances for all tractors, and those who supported less stringent requirements. Most trucking industry comments (from truck manufacturers and brake suppliers) urged 25 percent reductions for standard three-axle tractors only. In making these recommendations, the trucking industry commenters argued that data had not been provided for two-axle and severe service tractors, and that operational problems (*e.g.,* brake balance, stability, and steering pull) could occur if brake output is increased for those tractors. Specifically, TMA suggested that amending FMVSS No. 121 to require heavy trucks to stop within shorter distances may force manufacturers to implement designs that could cause poorer real-world stopping performance and instability. On this point, TMA stated that one of the reasons current production tractors are equipped with low-power steer axle brakes is for low-level brake applications, and that tractors designed only to achieve maximum straight-line decelerations when fully loaded may not perform well during normal brake applications.

In contrast, other commenters, including some brake suppliers (Bendix and Wabco) as well as Advocates and IIHS, supported a 30 percent reduction in stopping distance for all tractors. These commenters cited the agency's safety benefit analysis as justifying the cost of the improvement. Advocates also argued that there are other benefits associated with the use of disc brakes, including greater resistance to fading.[14] Bendix stated that more powerful brakes, both disc and enhanced drum, are currently available and being used on the road with no significant operational problems.

Comments on the Proposal To Reduce Service Brake Stopping Distance Performance by 20–30 Percent in the Lightly Loaded Condition

Few comments were received on this topic. However, TMA stated that currently, standard three-axle unloaded tractors start to experience rear wheel slip during brake applications of approximately 30 psi or more.

Comments on the Proposal To Reduce Emergency Braking Stopping Distance by 20–30 Percent

Comments from the trucking industry opposed the proposed reduction in emergency braking stopping distance. Many commenters stated that NHTSA had not provided any crash data or any other rationale to justify why any such reduction is necessary. These commenters also stated that the occurrence of a crash-imminent situation at the same time as a primary or secondary brake system failure is likely to be extremely rare.

Comments on the Proposed Two-Year Lead Time

Trucking industry commenters and NADA argued that, for standard three-axle tractors, a two-year lead time is adequate to meet a 25 percent reduction in stopping distance. No specific recommendations were offered for two-axle or severe service tractors, although ATA suggested a two-stage implementation strategy for standard three-axle tractors and all other tractors. These commenters also stated that if the agency decides on a 30 percent reduction in stopping distance, longer lead times would be required for brake system development and evaluation.

Haldex and other commenters also recommended that the stopping distance reduction be timed as to not coincide with the 2010 effective date for new engine emission standards, set to become effective by the Environmental Protection Agency.

Vehicle Modifications Necessary To Meet Proposed Reductions in Stopping Distance

Commenters from the trucking and brake industry stated that the largest percentage of improvements in stopping distance would be achieved by using more powerful steer axle brakes; either enhanced drum brakes (larger in width and/or diameter than standard drum brakes) or disc brakes. Most commenters added that more powerful brakes on the drive axles would further contribute to braking performance. Freightliner indicated that 97 percent of its fleet would require brake improvements to meet a 25 percent stopping distance reduction.

Commenters from the trucking industry suggested, but provided little specific information on, other modifications to the vehicle that may be necessary to achieve the improved braking performance. These modifications include chassis structural analysis, redesign, and validation. TMA stated that packaging larger steer axle brakes could result in steering problems. On the other hand, brake suppliers suggested that these issues could be resolved.

For two-axle tractors, several commenters stated that instability could prove to be a problem. Accordingly, TMA stated that for two-axle tractors with a short wheelbase, the following modifications would be necessary to allow the tractor to comply with a 30 percent reduction in the FMVSS No. 121 test: (1) Steer axle brakes would need to be enhanced; and (2) drive axle brake torque would need to be reduced to prevent wheel lockup (a condition which would prove hazardous during normal road braking situations). TMA indicated that these problems could be mitigated by added electronic stability systems, but that such systems could increase stopping distance and dramatically increase cost.

Margin of Compliance Issues

Commenters on this issue stated that tractor manufacturers target a 10 percent margin of compliance to account for test conditions and vehicle variability. Haldex stated that with a 10 percent margin of compliance on a 25 percent reduction in stopping distance, manufacturers would strive to achieve a total reduction in stopping distance of 35 percent.

Cost and Weight of Improved Braking Systems

Few commenters provided information on the issues of cost and weight of improved braking systems in response to NHTSA's request. Freightliner provided cost information on improved foundation brakes, but without supporting data. According to Freightliner's figures, installing enhanced drum brakes on a three-axle tractor would add $222 to the cost,

[14] ''Brake Fade'' is a term used to describe a temporary decrease in torque output of a brake when exposed to certain conditions, such as high heat.

while adding disc brakes would cost an additional $1,627; the cost of adding disc brakes to a two-axle tractor would be $963. TMA commented that for two-axle and severe service tractors, NHTSA did not provide a cost analysis, and it argued that increasing stopping performance would result in cessation of production of certain vehicles manufactured in low volumes because manufacturers would not be able to amortize the manufacturing/engineering costs, which would in turn limit market choice.

With regard to weight, Bendix stated that, currently, the heaviest drum brake weighs 32 lbs. more than the lightest disc brake, while the heaviest disc brake weighs 134 lbs. more than the lightest drum brake. WABCO stated that its disc brakes are equivalent in weight to high performance drum brakes.

Brake Balance Issues With Existing Trailers

Commenters provided relatively little information on the issue of brake balance with existing trailers. Truck manufacturers stated that brake balance information will need to be further evaluated. Some brake manufacturers provided comments as well. For example, Bendix stated that its tests of disc-braked tractors had shown no objectionable brake balance issues. ArvinMeritor, however, stated that if stopping distance were reduced by more than 25 percent, drive axle torque would need to be increased, which would cause disruptive issues with the existing trailer fleet.

Braking Performance of Single-Unit Trucks

Commenters provided relatively little information regarding single-unit trucks. Haldex and Bendix suggested that further testing needs to be done, and that the government should work with industry to develop test data on the subject. Bendix stated that currently, single-unit trucks have a higher center of gravity than tractors, and that their stopping distances are about 15 percent shorter than tractors.

Developments in Advanced ABS and ECBS Systems and Their Effects on Stopping Distance Performance

Several brake suppliers provided comments on the state of advanced ABS and ECBS on stopping distance performance. Specifically, WABCO stated that currently, ABS systems installed on tractors uses modified individual regulation (MIR), which reduces yaw movement [15] on split-coefficient road surfaces. According to the commenter, with larger foundation brakes, this system should not require significant modification, and it could help alleviate potential problems with larger brakes. Bendix also stated that electronic stability programs for rollover prevention and yaw stability are available on a variety of truck tractors.

Haldex stated that ECBS may improve stopping distance by reducing the interval it takes between the time when the vehicle operator depresses the brake pedal to the time when brake forces are actually generated. However, Haldex also stated that because FMVSS No. 121 requires redundant brake control systems, ECBS is not a viable option for heavy vehicles at this time. Haldex, like a number of other commenters, stated that advanced ABS does not reduce stopping distance.

Dynamometer Testing Requirements

Truck manufacturers and brake suppliers both recommended that there be no changes to the FMVSS No. 121 dynamometer requirements. Some brake manufacturers, such as Haldex and HDBMC, stated that current dynamometer testing procedures in FMVSS No. 121 impose no appreciable limitations on the useable brake torque, and expressed concern that changes in dynamometer requirements could have the effect of limiting their options.

Arvin Meritor and Bendix stated that they were planning on conducting further dynamometer testing, and would present the results to NHTSA. However, NHTSA has not received any additional information on this issue.

Brake Burnish Issues

A comment by HDBMC stated that in order to achieve a reduction in stopping distance, higher torque front brakes would be required on truck tractors. According to the commenter, the higher torque front brakes would do more of the work during burnish, thus lowering the rear brake temperatures and reducing the conditioning of the rear brakes. HDBMC stated that coupled with the trend toward wider rear brake configurations, this will result in lower temperatures for rear brakes, and the critical temperature needed to properly condition the rear brakes would not be achieved. In order to address this issue, HDBMC recommended the agency reinstate the FMVSS No. 121 burnish procedure that existed prior to 1993. HDBMC also stated that because the specification for rear-axle burnishing was reduced when the standard was amended in 1993,[16] parking brake performance has been negatively affected, and this problem would be expected to worsen under the agency's reduced stopping distance proposal.

Arvin Meritor also commented on the burnish issue, requesting that an optional burnish procedure be added to the FMVSS No. 121 dynamometer test. The commenter's recommended procedure calls for six optional stops, using 100 PSI pressure from a starting speed of 60 mph, at the conclusion of the 350 °F brake burnish.

Comments on Tractor Stopping Distance Data

Comments from manufacturers raised two objections to the stopping distance data provided by NHTSA. To begin with, several commenters stated that the agency's proposal was non-specific, because it specified a range of potential stopping distance reductions, rather than a pinpoint proposal. Further, commenters stated that NHTSA performed testing only on typical three-axle tractors. For example, TMA stated that the absence of data on two-axle and severe service tractors should preclude the agency from issuing a rulemaking on those types of tractors at this time. TMA and Bendix provided their own testing data from tractors with enhanced foundation brakes, which in general showed significant improvements in performance.

With regards to the Radlinski testing data referred to in the NPRM, few commenters provided specific comments. Instead, most commenters simply noted that the data were limited to standard three-axle tractors. Bendix added that it believes the Radlinski test data is representative of improvements that can be achieved.

A cooperative testing system for tractor stopping distance was recommended by a variety of commenters, including International, Freightliner, HDBMC, and Arvin Meritor. In addition, the TMA recommended the agency initiate a test program for two-axle and severe service tractors.

In-Use Truck Brake System Maintenance

Several commenters (truck manufacturers and brake suppliers) commented on the need for better servicing and maintenance of truck brakes, noting that in-service brakes frequently fall short of the standards set for brakes sold with new vehicles. Brake

[15] Yaw movement refers to vehicle rotation producing lateral sliding, due to tires on one side of the road producing more friction than tires on the other side.

[16] Docket # 2005–21462–20.

Pro stated that the vast majority (85 percent) of trucks, tractor-trailers, and trailers in North America have had some form of brake system component maintenance work or replacement work done on them, and would no longer necessarily meet the new vehicle stopping distance standards. TMA stated that 45 percent of trucks involved in crashes where brakes were the primary avoidance system had non-compliant brakes.

Reduced Test Speed Stopping Distance Requirements

HDBMC and Bendix argued that brake system reaction time is not taken into account in the NPRM's proposed tables in the reduced speed test requirements. They argued that this resulted in unrealistic stopping distances. Both commenters provided recommendations for adjusting the lower test speed stopping distances to account for brake system reaction time.

Cargo Securement

OOIDA commented that if tractors with improved brake systems are able to achieve higher deceleration rates, this could affect the safety of cargo securement systems, and they provided information on the Federal Motor Carrier Safety Administration's (FMCSA's) recent regulatory changes in this area.[17]

III. The Final Rule and Response to Public Comments

a. The Final Rule

i. Summary of Requirements

In light of the estimated benefits, in terms of lives saved and property damage avoided, we are upgrading the brake performance requirements of FMVSS No. 121 for air-braked tractors. The requirements of this regulation have been drafted so as to advance the safety and braking performance of truck tractors without imposing overly high costs on the trucking industry or requiring technical advances beyond what are available in the commercial market today. In overview, the final rule specifies 30 percent decreases in required stopping distance for the vast majority of air-braked tractors. The rule also sets somewhat less stringent requirements for a small percentage of truck tractors in light of practicability concerns.

Specifically, the upgrade to FMVSS No. 121 set forth in this final rule specifies a 30 percent reduction in stopping distance that is expected to apply to approximately 99 percent of air-braked tractors. The reduction lowers the maximum stopping distance from the current distance of 355 feet to 250 feet when tractors are tested in the loaded-to-GVWR condition from 60 mph. For three-axle tractors with a GVWR of over 70,000 pounds, and four (or more) axle tractors with a GVWR of over 85,000 pounds, the stopping distance requirement in the loaded-to-GVWR condition is being set at 310 feet.

The decision to adopt a 250-foot stopping distance is based on the agency's analysis of the potential safety benefits that may be achieved by using enhanced braking technology and the costs and feasibility of upgrading the requirements to the new level. NHTSA research demonstrated that for most tractors—including standard three-axle tractors which comprise over 80 percent of the commercial fleet—the upgrade could be achieved at relatively low cost and with minimal impact to tractor design specifications. Specifically, research demonstrated that relatively low-cost enhanced drum brakes would be adequate to achieve stopping distances within 250 feet, with a margin of compliance of 10 percent.[18] For most of the remaining tractors, including two-axle and most severe service tractors, NHTSA concluded that the upgraded requirements were also attainable, although more powerful disc brakes and other design changes may need to be implemented in order to stop within the required limits without detrimental effects on stability or brake balance.

For a small number of severe service tractors with three axles and a GVWR of 70,000 pounds or more, or equipped with four or more axles and a GVWR of 85,000 pounds or more, the agency is setting a 310-foot requirement (similar to the current loaded-to-GVWR requirement for air-braked single-unit trucks). This is due to the fact that even when fitted with current disc brakes at all wheel positions, it has been demonstrated that these vehicles cannot achieve 30 percent reductions in stopping distance.

For all tractors, the stopping distance requirement in the lightly-loaded test condition is set at 235 feet, as it was determined that with improved foundation brakes, this requirement is well within the capabilities of all heavy truck manufacturers to achieve.

The required improvement in stopping distance performance is limited to service brakes, and does not include emergency braking. Several commenters argued persuasively that improvements to emergency braking performance could have deleterious effects on lateral stability and control, due to modifications to the ABS algorithms that would be required to meet the emergency braking requirements. Further, there are no data to show that tractors operating in the bobtail condition (*i.e.,* with no trailer attached) and experiencing an emergency braking situation are contributing to the heavy truck crash problem.

ii. Compliance Dates

There are two compliance dates on which the new stopping distance requirements become mandatory. For standard three-axle tractors, the new stopping distance requirements become mandatory on August 1, 2011. ''Standard three-axle tractor'' refers to typical three-axle tractors that have a steer axle GAWR less than or equal to 14,600 pounds and a combined drive axle GAWR less than or equal to 45,000 pounds, for a total GVWR equal to or less than 59,600 pounds. The agency's test data show that, for these tractors, compliance with the new stopping distance requirements can be readily achieved.

The compliance date for all two-axle tractors, as well as severe service tractors with a GVWR greater than 59,600 pounds, is August 1, 2013. NHTSA's test data indicate that two-axle tractors can meet a 250-foot loaded-to-GVWR stopping distance requirement with improved brake systems. However, additional lead time is needed for manufacturers to more fully evaluate new brake systems to ensure compatibility with existing trailers and converter dollies when used in multi-trailer combinations. Further, more time is needed to minimize the risk of vehicle stability and control issues. With regard to severe service tractors, the available test data and analysis indicate that the respective 250-foot and 310-foot stopping distance requirements can be met by improved brake systems. However, as only limited development work has been performed, these vehicles require additional lead time to ensure complete testing and validation of new brake systems.

iii. Margin of Compliance

Manufacturers need to ensure that all of their vehicles meet a test requirement established by a Federal safety standard. To account for variability, including vehicle-to-vehicle variability, they typically design vehicles with a margin of compliance.

[17] This regulation assigns certain g-forces within which cargo securement devices and systems must contain the vehicle's cargo load. *See* 49 CFR 393.102.

[18] The issue of margin of compliance is discussed later in this document.

With regard to stopping distance, the comments stated that the traditional industry compliance margin is 10 percent.[19] We note that this does not necessarily mean that manufacturers do not sometimes certify vehicles with a smaller margin of compliance. However, they do need to take whatever steps are necessary to ensure that each vehicle they certify complies with applicable requirements.

We believe that calculations of 10 percent compliance margins are useful for analytical and discussion purposes in considering what stopping distance requirements are appropriate and practicable.

We note that in this document, in many cases we have cited a ten percent margin of compliance from the average stopping distance that a vehicle test has demonstrated in testing despite the fact that a vehicle is required to meet the requirement in only one of six stops. However, since there is generally little variability in the distance achieved among multiple stops due largely to the incorporation of anti-lock braking systems, it generally doesn't make much difference whether we look at the average or best stop distance.

b. Summary of NHTSA Testing and Results Conducted After Publication of the NPRM

i. Testing Conducted on Three-Axle Truck Tractors

Available test data demonstrate that typical three-axle tractors can meet a requirement with a 30 percent reduction in stopping distance using only enhanced drum brakes, the least expensive type of improved foundation brake available. NHTSA used the same definition for a ''typical three-axle tractor'' as TMA and HDBMC, which is a 6x4 configuration (three axles with six wheel positions; a non-driven steer axle and two rear drive axles) with a GVWR below 59,600 pounds, a steer axle with a GAWR equal or less than 14,600 pounds, and tandem drive axles rated equal or less than 45,000 pounds total capacity. According to the test data from the Radlinski[20] reports (7 tests), typical three-axle tractors with enhanced S-cam drum brakes at all wheel positions achieved the target 30 percent reduction in stopping distance, with margins of compliance (based on a 250-foot stopping distance requirement) ranging from 12 to 18 percent. This is superior to the ten percent threshold used by most manufacturers.

NHTSA also conducted testing at its Vehicle Research Test Center (VRTC), using a variety of foundation brake systems.[21] The VRTC tests of two tractors showed that with disc brakes at all wheel positions, both tractors could meet the 30 percent target with compliance margins between six and 13 percent, while one of these tractors could meet the 30 percent target using a hybrid (disc/drum) configuration with disc brakes on the steer axle and standard drive axle drum brakes (16.5″ diameter drum x 7″ wide brake linings) with a six percent margin of compliance.

The above tests show that disc brakes provide an alternative means to achieve compliance with a 30 percent reduction in the stopping distance requirement. All of the all-disc braked examples could meet or exceed the ten percent margin of compliance with one exception (one VRTC test). Moreover, the agency is confident that the performance of that one example could readily be improved by increasing the torque output of that disc brake (or switching to newer, readily-available, and more powerful disc brakes).

Results for the hybrid combination of disc brakes on the steer axle and standard drum brakes on the drive axle were mixed, with one tractor meeting the 30 percent reduction in stopping distance with a six percent margin, even though the performance would be expected to match or exceed the performance of a tractor with enhanced drum brakes at all wheel positions (which, as the Radlinski testing showed, was able to meet the 30 percent reduction with margins over ten percent). Also, the agency did not test any hybrid configurations using enhanced drum brakes (standard 16.5″ x 7″ drive axle brakes were used in the agency's hybrid tests). Based on these results, one conclusion that can be drawn regarding cost is enhanced drive axle S-cam drum brakes will be necessary, at a minimum, whether used on the steer or drive axles of a standard three-axle tractor, because the available data show that standard drum brakes (15″ x 4″ steer, 16.5″ x 7″ drive) have not been able to achieve the necessary performance to meet the requirements in this final rule.

ii. Testing Conducted on Two-Axle Truck Tractors

NHTSA's testing after publication of the NPRM indicated that a Sterling 4x2 tractor is capable of complying with a 250-foot stopping distance with enhanced foundation brakes.[22] In the VRTC testing, the test tractor was purchased new and was originally equipped with larger steer axle S-cam drum brakes of 16.5″ diameter by 5″ lining width, and standard S-cam drum brakes (16.5″ x 7″) on the drive axle. In the as-received state (approximately 1,000 miles of normal road use, half of the time in the bobtail condition and half of the time towing a 48-foot flatbed trailer), the average stopping distance (based on six stops) was 241 feet from 60 mph at GVWR plus 4,500 pounds of weight on the single axle, unbraked control trailer as specified in FMVSS No. 121. However, when the foundation brakes were replaced with all new components and subjected to a complete FMVSS No. 121 burnish, the average stopping distance increased to 332 feet. Further investigation of this problem indicated that the replacement brake linings generated less torque than the original linings. This is discussed in further detail in the brake burnish section below.

The same VRTC test tractor was also tested with disc brakes. The first configuration of the VRTC testing was a hybrid brake system test. In this test, the tractor was equipped with disc brakes on the steer axle and the standard S-cam drum brakes on the drive axle (hybrid brake configuration), and again subjected to an FMVSS No. 121 burnish. The average loaded-to-GVWR stopping distance was 223 feet, meeting the proposed 250-foot stopping distance requirement with a margin of compliance of 11 percent. In the final configuration, the tractor was equipped with disc brakes on both the steer axle and drive axle. Here, the average loaded-to-GVWR stopping distance was 200 feet, a 20 percent margin of compliance.

iii. Testing Conducted on Severe Service Tractors

After publication of the NPRM, the agency conducted additional testing on a severe service truck judged to have similar service braking characteristics as a tractor of similar size and weight dimensions.[23] The test truck was a three-axle Peterbilt Model 357 with a steer axle GAWR of 18,000 pounds and tandem drive axle GAWR of 44,000 pounds. The total GVWR was 62,000

[19] Bendix stated, for example, that the traditional industry compliance margin is 10 percent. Docket # NHTSA–2005–21462–24, p. 5. TMA referred to ''a requisite 10 percent compliance margin.'' Docket # NHTSA–2005–21462–34.

[20] Docket # NHTSA–2005–21462–5, 6, 7.

[21] *See Class 8 Truck Tractor Braking Performance Improvement Study,* available at: *http://www.nhtsa.dot.gov/staticfiles/DOT/NHTSA/NRD/Multimedia/PDFs/VRTC/ca/capubs/DOTHS809700.pdf*

[22] Docket # NHTSA–2005–21462–39, p. 25.

[23] Docket # NHTSA–2005–21462–39, p. 10.

pounds, and the wheelbase was 275 inches. The vehicle was purchased as a chassis-cab and manufactured as a single-unit truck, and a load frame was attached to the frame rails for test loading purposes. Although a single-unit truck differs in many ways from a truck tractor, based on our testing we found that the single-unit truck was likely to experience similar, if more severe, dynamic load transfer onto its steer axle than if it had been tested as a tractor, thereby rendering it a reasonable surrogate for a severe service tractor in this context.

The substantive difference in braking performance for this vehicle in the truck versus tractor configuration would be apparent in emergency braking performance, for which the truck configuration would likely need to utilize spring brake modulation to meet the stopping distance requirement at GVWR (this is because there is no equivalent test requirement for tractors, since emergency braking requirements only apply in the unloaded condition), and there are also differences in parking brake performance requirements for single-unit trucks and tractors. However, neither of these brake system differences were factors during the normal service brake tests for the Peterbilt truck.

The truck used in the VRTC testing was tested with a variety of brake configurations in order to determine its stopping distance performance. The truck was originally manufactured with enhanced 16.5″ x 6″ S-cam drum brakes on the steer axle, and standard 16.5″ x 7″ S-cam drum brakes on the drive axles. It was also equipped with a 6S/6M ABS system that should provide the highest braking efficiency because the braking forces are modulated individually at each wheel position. With the OEM S-cam drum brakes, the average loaded-to-GVWR, 60 mph stopping distance was 280 feet, which would not meet the enhanced 250 feet stopping distance requirement. In a hybrid configuration with disc brakes on the steer axle and standard S-cam drum brakes on the drive axles, the average stopping distance was 251 feet. With disc brakes at all wheel positions, the average stopping distance was 224 feet, meeting the target reduced stopping distance with a better than 10 percent margin of compliance.

Another test condition that was evaluated for the severe service Peterbilt truck was to up-load the vehicle to a GVWR of 76,000 pounds and conduct 60 mph stops using all disc brakes. The average stopping distance for six stops was 254 feet and the minimum stopping distance out of the six stops was 251 feet. The standard deviation of all six stops was 3.2 feet, indicating that there was very little stop-to-stop variability, and thus this vehicle achieved very repeatable performance with disc brakes.[24]

In July 2006, the VRTC also ran simulation testing based on the results of the Peterbilt truck testing to determine braking performance at 80,000 pounds GVWR.[25] This study used the Truck Sim vehicle dynamics modeling software with which the VRTC staff has extensive experience, including validation of many modules (such as foundation brakes and ABS control systems) used in the program. This simulation study determined that with the same all-disc brake configuration, but with the GVWR increased to 80,000 pounds, a heavy truck's estimated stopping distance would be 280 feet. By increasing the brake torque on the steer axle (using type 30 brake chambers in place of type 24 chambers), the estimated stopping distance decreased to 262 feet at 80,000 pounds GVWR. Additional parametric studies (by modeling further increases in brake torque at all wheel positions) showed that if brake torque could be increased sufficiently to utilize all available tire-road friction, stopping distances as low as 227 feet could be achieved (meeting the 30 percent target with a nine percent margin of compliance). However, the agency is not aware that there are any available disc brakes currently capable of generating the requisite torque and that would also be able to be packaged within the available wheel envelope. Based upon this analysis, the agency has concluded that the 30 percent reduction in stopping distance may not be feasible for heavy truck tractors above 80,000 pounds GVWR.

c. Response to Public Comments

i. Straight-Line Braking Performance of Tractors With Improved Brake Systems

In this section, we discuss data and arguments relating to the performance of tractors with improved braking systems. The purpose of this section is to address whether various tractor configurations are capable of meeting the proposed performance requirements of FMVSS No. 121 with improved braking systems. In addition, we provide additional insight on what kind of improved brakes will be necessary for various tractor configurations to meet the requirements of the standard, and provide further refinement of our cost estimates. This portion of the final rule deals only with straight-line braking performance. Issues of stability, control, brake balance, burnish, and other issues are dealt with later in the rule.

1. Braking Performance of Typical Three-Axle Tractors With Improved Brake Systems in the Loaded-to-GVWR Condition

In the NPRM, the agency proposed to amend the standard's fully-loaded service brake stopping distance, at 60 mph, from the currently-required 355 feet to a new, reduced distance in the range of 284 feet (20 percent reduction) to 249 feet (30 percent reduction). The agency requested comments on the proposed reductions in the required stopping distance.

A number of commenters supported the agency's decision to reduce the stopping distance for typical three-axle tractors by 30 percent. Advocates and IIHS supported the 30 percent reduction proposal over the 20 percent reduction proposal, citing the significantly higher estimated benefits in terms of the number of injuries, fatalities, and property damage prevented. Advocates also suggested that the agency should mandate the use of disc brakes in addition to the reduced stopping distances, arguing that under actual service conditions, disc brakes will outperform hybrid systems and drum brakes because disc brakes are relatively immune to fade from either water or heat. IIHS also stated that an additional benefit of the reduced stopping distance would be encouraging the use of disc brake systems, citing similar fade-resistant attributes of disc brakes.

One brake manufacturer, Bendix, commented that it supported a 30 percent reduction in stopping distance for three-axle tractors, and submitted test data to support the feasibility of this requirement. Eight tests with disc brakes at all wheel positions showed that all of the tractors tested could meet the 30 percent target with compliance margins between 21 percent and 18 percent. Data on one hybrid three-axle tractor showed that the 30 percent target was met with an eight percent margin of compliance. Finally, one all drum brake equipped tractor (drum brake sizes were not specified) met the 30 percent target with a 14 percent margin of compliance.

The TMA recommended that the stopping distance for three-axle tractors be reduced by a maximum of 25 percent, a position shared by International, Haldex, and NADA. TMA supplied test results for three-axle

[24] Docket # NHTSA–2005–21462–39, p. 23.

[25] VRTC/R&D—*Vehicle Modeling Research to Estimate Stopping Distances for 80,000-lb GVWR Trucks and Tractors Using Current Brake Technologies.* Docket # NHTSA–2005–21462–39, p. 15.

tractors as well. For three-axle tractors equipped with all disc brakes (8 tests), the 30 percent target in stopping distance reduction was met with margins of compliance ranging from 10–20 percent. In hybrid configurations with disc brakes on the steer axle and enhanced drum brakes on the drive axles (eight tests) and in all enhanced S-cam drum configurations (eight tests), the margins of compliance ranged from two to 20 percent.

In its comments, ArvinMeritor stated that for typical three-axle tractors to achieve tractor stopping distance reductions greater than 25 percent, an increase in drive axle torque would be needed. Based on the vehicle testing conducted by NHTSA (*see* above, section III, B), the agency agrees with this comment, and recognizes that improved drive axle foundation brakes will be part of meeting a requirement that reduces stopping distance by 30 percent.

For the final rule, the agency has decided to reduce the stopping distance for typical three-axle tractors in the loaded-to-GVWR condition, at 60 mph, from the currently-required 355 feet to 250 feet.[26] In arriving at this requirement, the agency reviewed the available test data of typical three-axle tractors with improved brake systems. That data showed that a 30 percent reduction is possible using a variety of enhanced brake systems. In addition, to ensure that the amended standard is practicable, the agency considered the margin of compliance that truck manufacturers typically would use during compliance to ensure that all similar production tractors would comply with the requirement, which specifies a target stopping distance of 225 feet.

Given the totality of the data provided by TMA and Bendix, NHTSA believes the test data demonstrate that for typical three-axle tractors a 30 percent reduction in stopping distance is readily achievable. In most cases a 10 percent margin of compliance was met or exceeded. Both NHTSA and commenters'data are consistent with the agency's position that a 30 percent reduction is feasible. For example, some tests demonstrate that typical three-axle tractors with enhanced drum brakes at all wheel positions are readily capable of attaining 30 percent reductions with more than a 10 percent margin of compliance, although the upper range (lowest performing) of the data from TMA on at least one tractor with enhanced drum brakes showed that the margin of compliance was approximately five percent.

NHTSA does not agree with the recommendation from Advocates that it mandate disc brakes for use in all heavy truck tractors. NHTSA has not mandated the use of disc brakes because these presumed safety benefits have not been quantified, and no data to this extent was provided by Advocates. Further, we have no information as to what the net benefit of any safety benefit unique to disc brakes would be, and how it would compare to the increased costs of disc brakes.

The agency believes that the available data demonstrate that 30 percent reductions in stopping distance are readily achievable on typical three-axle tractors. A ten percent margin of compliance has been demonstrated for the majority of tractors using disc brakes and enhanced drum brakes (the exact percentage for margin of compliance cannot be determined for some of the data for which only ranges in performance for several tests were indicated). Therefore, the agency concludes that it is practicable to achieve 30 percent reductions in stopping distance when currently-available improved foundation brakes are applied to typical three-axle tractors. We also note that many tests demonstrate that enhanced drum brakes on the steer and drive axles were sufficient for many standard three-axle tractors to meet the 30 percent reduction, allowing the lowest-cost option to be used for the vast majority of heavy truck tractors.

2. Braking Performance of Two-Axle Tractors With Improved Brake Systems in the Loaded-to-GVWR Condition

NHTSA proposed in the NPRM to reduce the stopping distance for all truck tractors, which includes two-axle tractors. As discussed below, based on agency testing and comments received, the agency concludes that all two-axle tractors can meet the 30 percent reduction in stopping distance requirements with improved braking systems. Although the agency did not include test data on two-axle tractors when the NPRM was published, since that time, the agency has completed a foundation brake study at the VRTC on a typical two-axle tractor. In addition, testing data from the TMA and Bendix also indicate that two-axle tractors are capable of meeting a 30 percent reduction in stopping distance with a ten percent margin of compliance if equipped with disc brakes.

While industry commenters generally did not support reducing stopping distance for two-axle tractors, TMA data submitted in response to the NPRM indicated that for regular service two-axle tractors (*i.e.,* with a drive axle GAWR below 23,000 pounds), the 250-foot stopping distance requirement could be met using disc brakes.[27] TMA tested two-axle tractors in hybrid brake configurations and an all-disc configuration. The first hybrid configuration (one test; disc brakes on the steer axle and standard 16.5″ x 7″ S-cam drum brakes on the drive axle) was able to meet the 250-foot requirement with a margin of compliance of approximately 12 percent. A second hybrid configuration (two tests; with disc brakes on the steer axle and enhanced 16.5″ x 8.625″ S-cam drum brakes on the drive axle) indicated that both test vehicles met the 250 foot requirement, one with a margin of approximately 15 percent, and the other with a margin of only two percent. Finally, an all-disc configuration (one test) met the proposed 30 reduction with a 22 percent margin of compliance.

TMA also provided supplemental comments in October 2006,[28] with additional data on the performance of two-axle tractors with improved foundation brakes. Two tractors with disc brakes at all wheel positions indicated that the best of six stops ranged from 206 to 213 feet in the loaded-to-GVWR condition from 60 mph, indicating margins of compliance well over ten percent. A third tractor with a hybrid disc/drum configuration was able to stop in 221 feet, giving it a 12 percent margin of compliance. A fourth tractor with enhanced S-cam drum brakes at all wheel positions had a shortest stop of approximately 248 feet, and thus a marginal compliance with a 30 percent stopping distance reduction. Three tractors tested, when tested with standard drum brakes, could not meet a 250-foot stopping distance.

Bendix also provided data indicating that two-axle tractors could meet the 30 percent stopping distance reduction.[29] Bendix provided test data on the disc/drum hybrid configuration (two tests; and the drive axle drum brake sizes were not specified). In those tests, the average stopping distances for both tractors would meet the proposed 250-foot requirement with a margin of compliance of 12 percent for one vehicle and nine percent for the other. Using the best of six stops for the poorer performing vehicle (225 feet, rather than the average stopping distance of 228 feet), the margin of compliance

[26] A 30 percent reduction from 355 feet is, in fact, 249 feet, which the agency has rounded to an even 250 feet.

[27] Docket # NHTSA–2005–21462–26, p. 5.

[28] Docket # NHTSA–2005–21462–35.

[29] Docket # NHTSA–2005–21462–24–0001, p. 9.

increases to 10 percent. Bendix test data on all-disc brake two-axle tractors (two tests) indicated that both vehicles would meet a 250-foot stopping distance requirement and that the margins of compliance were 19 and 14 percent based on the average of six stops in each test. The GAWRs for all two-axle tractor tests were 22,999 pounds or less on the drive axle and 12,000 pounds or less on the steer axle (*i.e.,* they were not severe service two-axle tractors).

Finally, in its original comments, TMA stated that drive axle brake torque would need to be reduced to prevent wheel lockup (a condition which would prove hazardous during normal road braking situations). However, we believe ABS, which has been required on all new truck tractors manufactured on or after March 1, 1997, prevents wheel lockup. Hence, this comment is not persuasive.

Based on the testing data accumulated by NHTSA and provided by the commenters, the agency has concluded that meeting a 30 percent reduction in stopping distance is achievable for currently-produced two-axle tractors with at least a 10 percent margin of compliance with all-disc configurations. To a lesser extent, the hybrid disc/drum configurations (some of which had good margins of compliance, and some of which had poor margins) may also be able to achieve the 30 percent reduction in stopping distance.

3. Braking Performance of Severe Service Tractors With Improved Brake Systems in the Loaded-to-GVWR Condition

a. Definition of Severe Service Tractor and Specific Safety Benefits

With the exception of certain vehicles with extremely high GVWRs or GAWRs that are excluded from the requirements of Standard No. 121, the reduced stopping distance requirements proposed in the NPRM were to apply to all severe service tractors. For purposes of this document, NHTSA is using TMA's definition of a three-axle severe service tractor, as a three-axle tractor having a steer axle GAWR greater than 14,600 pounds and tandem drive axles with a total GAWR greater than 45,000 pounds. In addition, severe service tractors include those tractors with twin steer axles, auxiliary axles (*e.g.,* lift axles), and/or tridem drive axles. Chassis configurations include 6x4, 8x4, 8x6, 10x6, and 14x4 layouts. Based on comments from TMA and Freightliner, the GVWR of severe service tractors is greater than 59,600 pounds and can exceed 100,000 pounds. The commenters explained that severe service tractors are used in special purpose applications such as oil field service, extreme heavy hauling, transporting earth moving equipment, and logging. The commenters further stated that operation is both on-road and off-road, and in some cases, on-road use is at relatively low speeds with the tractor-trailer combinations being accompanied by escort vehicles.

Freightliner [30] stated that severe service tractors comprise approximately seven percent of tractor production and are involved in 5.6 percent of fatal tractor crashes, according to the UMTRI report on Class 8 tractors involved in fatal crashes (included with TMA's comments).[31] To the extent possible, the agency compares fatal crash involvement rates of vehicle types based upon fatalities per 100 million vehicle miles traveled (VMT) (*see* Section II of the NPRM). As described in the NPRM, tractors have a lower overall crash rate per 100 million VMT compared to light vehicles (passenger cars, light trucks, and SUVs), but are over-represented in fatal crashes. The UMTRI report submitted by TMA [32] did not analyze tractor crash data for the three types of tractors studied (typical three-axle, two-axle, and severe service tractors) based upon VMT exposure, and the agency is not aware such VMT exposure data being available from the known crash data sources. Based upon the comments received, it appears that the on-road mileage exposure for severe service tractors is lower than for typical three-axle or two-axle tractors.[33] Nonetheless, the 5.6 percent fatality involvement rate does not indicate that severe service tractors are underrepresented in fatal crashes to an extent that the agency should consider excluding them from this final rule. Given the potential safety benefits, we believe the deciding factor in determining the loaded-to-GVWR stopping distance requirements for severe service tractors under this final rule should be dependent on the best performance that can be achieved using the available improved brake systems.

In its comments, TMA delineated several broad categories of severe service tractors that the agency believes comprise highly relevant categories. The first is three-axle severe service tractors with GVWRs ranging from approximately 60,000–70,000 pounds. These tractors have a steer axle GAWR in the 13,000–14,500-pound range and tandem drive axles rated in the approximate range of 46,000–55,000 pounds (as depicted in Figure 5 in TMA's April 2006 comments, which shows a three-axle tractor towing double trailers.) The second category of severe service tractors described by TMA are three-axle severe service tractors with GVWRs above 70,000 pounds. Finally, there are severe service tractors in 8x4, 8x6, 10x6, 14x4, and other configurations. This group of vehicles is used in special purpose or extreme heavy haul applications (as depicted in Figure 6 of TMA's comments, which shows a 10x6, twin-steer tractor with tridem drive axles.) Based upon the information provided to the agency in several *ex parte* meetings that have been held since the publication of the NPRM,[34] the typical weight ratings for the 10x6 tractor photographed would be 14,500 pounds GAWR for each steer axle and 20,000 pounds for each drive axle, yielding a GVWR of 89,000 pounds. This tractor would not be excluded from FMVSS No. 121 based on its axle ratings. Other unusual tractor configurations would also tend to have high GVWRs over 70,000 pounds and still be subject to FMVSS No. 121.

b. Three-Axle Severe Service Tractors With a GVWR Under 70,000 Pounds

Based on the agency's testing, as well as test data provided by the commenters, NHTSA believes that severe service three-axle tractors with a GVWR under 70,000 pounds can meet a 250-foot stopping distance requirement using enhanced foundation brake systems. VRTC test results and commenter data lead the agency to believe that three-axle severe service tractors with a GVWR between 60,000 and 70,000 pounds are capable of meeting the 30 percent reduction in stopping distance using available enhanced braking systems.

NHTSA's testing indicated that lower-GVWR three-axle severe service tractors will be able to meet a 250-foot stopping distance requirement. Here, NHTSA refers to the Peterbilt truck, tested by the VRTC, which is very similar to three-axle severe service tractors of the 60,000–70,000 pounds GVWR category. As stated above, the VRTC testing used a single-unit truck with comparable braking performance to a severe-service three-axle truck tractor. This tractor, when equipped with disc brakes and tested at a GVWR of 62,000 pounds, was able to meet the 250-foot stopping distance requirement with a 10 percent margin of compliance.[35] Therefore, the

[30] Docket # NHTSA–2005–21462–25.

[31] Docket # NHTSA–2005–21462–26.

[32] Docket No. NHTSA–2005–21462–26; *see* attachment, p. 16.

[33] Docket # NHTSA–2005–21462–26, p. 11.

[34] Memorandums of *ex-parte* meetings provided in Docket No. NHTSA–2005–21462–36.

[35] Docket # NHTSA–2005–21462–40.

agency believes that it is practicable to require similarly-configured tractors to achieve similar braking performance.

TMA's supplemental comments include data that enhance NHTSA's confidence in the practicability of this requirement. The data indicate that for lower GVWR three-axle severe service tractors, a 250-foot stopping distance and a ten percent margin of compliance can be achieved for three-axle, all-disc braked tractors of 62,000 and 66,000 pounds GVWR.[36] Both VRTC and TMA test data show that three-axle severe service tractors under 70,000 pounds GVWR are capable of meeting the reduced stopping distance with improved foundation brakes and can also achieve a 10 percent margin of compliance.

In its original comments,[37] TMA also stated that building a severe service tractor with improved brakes would result in production of a vehicle that is not commercially viable. TMA argued that such a vehicle would have far too aggressive brake linings, which would result in chatter and frequent failures of various brake components. TMA stated that this would be a commercially non-viable product. NHTSA notes that in its later comments submitted on October 2006, TMA tested a severe service tractor with disc brakes that was able to meet the proposed reduced stopping distance, and the organization did not further discuss these problems. NHTSA also notes that when equipped with modern enhanced braking systems, similarly-configured vehicles can meet the proposed requirements without the problems that TMA foresaw in its April 2006 comments. Therefore, the agency believes that the problems TMA described are obviated by the use of disc brakes.

In October 2006, TMA submitted supplemental comments that included additional information on severe service tractor stopping distance performance. The TMA testing included six drum and six disc brake configurations, performed on vehicles with three different drive axle GAWRs. TMA stated that the disc brakes used in these tests were prototype models that had not been fully tested for production (as dynamometer and other test data were not yet available). The agency assumes that these would be the largest practical disc brakes that would work within the available wheel and suspension envelope.

TMA's test results are discussed below, but the result we believe to be most noteworthy is that the TMA testing indicated that the proposed 30 percent reduction in stopping distance could be achieved using disc brakes. To summarize the TMA test results, when tested at a steer axle weight of 20,000 pounds and a tandem drive axle weight of 46,000 pounds, yielding a GVWR of 66,000 pounds, the baseline all-drum brake configuration (it was not specified whether the drum brakes were standard or larger sized) had a stopping distance of 262 feet. Testing of a hybrid configuration using the prototype disc brakes on the steer axle yielded a stopping distance of 229 feet, thus meeting the target with an eight percent margin of compliance. Finally, when tested with disc brakes at all wheel positions; the stopping distance was 223 feet, yielding an 11 percent margin of compliance. We note that the data for the all-disc brake test are consistent with the performance obtained by VRTC in its tests of the Peterbilt truck with a 62,000 pounds GVWR.

c. Three-Axle Severe Service Tractors With GVWR Over 70,000 Pounds

In contrast to three-axle tractors with a GVWR between 59,600–70,000 pounds, agency testing and commenters' data indicate that it is not practicable at this time for higher-GVWR three-axle severe service tractors to meet a 250-foot stopping distance requirement. In making this determination, the agency carefully considered its own data, as well as the data on high-GVWR three-axle truck tractors provided by the TMA in its comments. Nonetheless, NHTSA believes that improvements in stopping distance for these vehicles should be pursued, albeit at a level less than a 30 percent reduction. TMA's supplemental comments indicate that tractors with very high GVWRs (with regard to three-axle tractors, these have single axle weight ratings of 26,000 pounds or more, or tandem axle weight ratings of 52,000 pounds or more) make up less than one percent of annual tractor production.

The agency believes that severe service tractors over 70,000-pound GVWR can meet the stopping distance requirements for similar vehicles that are configured as single-unit trucks rather than tractors, because similarly-configured single unit trucks are currently being manufactured in compliance with FMVSS No. 121. As the service brake stopping distance requirement for single-unit trucks is 310 feet in the loaded-to-GVWR condition, the agency believes that specifying this standard on severe service tractors of similar weight is a practicable alternative to a 30 percent reduction in stopping distance.

TMA provided simulation test data for hybrid and all-disc foundation brake configurations of three-axle severe service tractors with a GVWR over 70,000 pounds.[38] The data that TMA used in its comments were based upon unspecified simulations, presumably similar to the Truck Sim work performed by VRTC. A footnote in the supplemental TMA submission indicates that one all-drum brake configuration at 72,000 pounds GVWR was verified by actual vehicle testing. The simulation results for a 72,000-pound GVWR tractor (20,000-pound steer axle load and 52,000-pound tandem drive axle load) estimated that the hybrid configuration would achieve a 248-foot stopping distance (within the 30 percent reduction target, but with little margin of compliance). When equipped with disc brakes at all wheel positions, the stopping distance was estimated at 242 feet, which would meet a 30 percent reduction in stopping distance with a three percent margin of compliance. The configuration with drum brakes [39] at all wheel positions was road tested at 72,000 pounds GVWR and had a stopping distance of 285 feet, above the 250-foot limit. TMA also stated that it is unclear what technologies would be needed to achieve high levels of braking performance improvements for tractors in this weight category.

In addition, TMA simulated a test condition with a tractor at 78,000 pounds GVWR, with a 20,000-pound steer axle load and a 58,000-pound tandem drive axle load. This tractor was not able to meet a 250-foot stopping distance with any brake combination, although it must be noted that a vehicle with a 58,000-pound tandem rating (29,000-pound GAWR per axle) is exempt from FMVSS No. 121 under Section 3, *Applicability,* paragraph (b). The stopping distance simulation results for this vehicle were 307 feet for the drum/drum configuration, 268 feet for the hybrid configuration, and 261 feet for the all-disc configuration. Despite the fact that the specific vehicle tested here would not be subject to the requirements of FMVSS No. 121, it does represent the upper edge of the GVWR range regulated under the FMVSS No. 121 requirements, and therefore the agency believes the TMA data are useful in setting stopping distance

[36] TMA comment of October 2006, docket # NHTSA–2005–21462–35.

[37] Docket # NHTSA–2005–21462–26.

[38] Docket # NHTSA–2005–21462–34.

[39] TMA did not provide dimensions for these brakes, but described them as the highest available performance brakes.

requirements for severe service tractors as part of this final rule.

In its October 2006 comments, TMA presented testing that indicated trucks with a GVWR over 70,000 pounds are incapable of meeting a 250-foot stopping distance requirement. In one example, a 72,000-pound GVWR tractor equipped with all disc brakes only achieved a three percent margin of compliance, which the agency does not consider to be enough for manufacturers to reliably build tractors with assured compliance to FMVSS No. 121. Similarly, a 78,000-pound GVWR three-axle tractor equipped with all disc brakes stopped in 261 feet, thus it did not meet a 250-foot stopping distance requirement. Because all-disc brake configurations generally produce the best available braking performance, it is not clear what advancements could be used to bring trucks of this weight within a 250-foot stopping distance. The agency therefore concludes that three-axle tractors with a GVWR greater than 70,000 pounds should be provided with a longer stopping distance requirement.

The agency has considered all of the available data and comments regarding severe service tractors to determine appropriate loaded-to-GVWR stopping distance requirements for these vehicles. The agency agrees with TMA that, based on all available information, foundation brakes that could provide loaded-to-GVWR stopping distance performance in the 250-foot range at 60 mph are not available for three-axle severe service tractors with a GVWR over 70,000 pounds. There are little or no test data available for tractors with a GVWR over 70,000 fitted with the largest available disc brakes to demonstrate that they would be able to meet a 30 percent reduction in stopping distance. In making this statement, the agency notes the TMA supplemental comments, which discuss the lack of extensive testing of prototype disc brakes.[40] Therefore, the agency does not believe it is practicable at this time to require three-axle severe service tractors over 70,000 pounds GVWR to meet the 30 percent reduction in stopping distance.

However, for three-axle tractors with a GVWR over 70,000 pounds, a 310-foot stopping distance requirement is an achievable goal. This represents a 13 percent reduction in stopping distance from the current 355-foot requirement. Based upon this requirement, and assuming a 10 percent margin of compliance, the 78,000-pound GVWR three-axle tractor, discussed in the TMA comments of October 2006, could meet the requirement with an adequate margin of compliance in a hybrid or all-disc brake configuration. Further, the 72,000-pound GVWR three-axle tractor would achieve an eight percent margin of compliance with an all-drum brake configuration. In that case, either slight improvements in the drum brakes or the installation of disc brakes on the steer axle would allow the tractor to achieve a ten percent margin of compliance. The agency believes that in both cases safety benefits will be obtained because of these improvements, but whether these benefits would be the same or smaller than for typical (non-severe service) three-axle tractors is unknown. We also note that for vehicles with a drive axle GAWR of 29,000 pounds or more, FMVSS No. 121 is not applicable, so that typically three-axle tractors with a GVWR of 78,000 pounds or more will be exempt from this requirement.

As previously discussed, the tests at VRTC of a severe service truck (used as a surrogate severe service tractor), loaded to a GVWR of 76,000 pounds and equipped with all disc brakes, had an average stopping distance of 254 feet. This represents an 18 percent margin of compliance to the 310-foot stopping distance requirement implemented under this final rule.

d. Severe Service Tractors With Four or More Axles

For severe service tractors with more than three axles, there is a similar distinction to be made between lower-GVWR tractors and higher-GVWR tractors. While the NPRM proposed reducing the stopping distance for all tractors uniformly, commenters and agency testing have indicated that a distinction should be made, similar to the distinction within severe service three-axle tractors. With regard to severe service tractors with four or more axles, we believe there are some tractor configurations that, even though they are in the severe service category, can comply with a 250-foot stopping distance requirement when most or all of the brakes are upgraded to disc brakes. A small percentage of these tractors, however, will not be able to currently comply with this requirement, and thus necessitate a different approach.

Some extra-axle tractors are based on, and perform very similarly to, severe service three-axle truck tractors. One example of this is a severe service three-axle tractor that has an auxiliary axle installed by either the truck manufacturer or by a vehicle alterer. The agency believes that its testing of a single-unit truck at VRTC provides a basis for determining the scope of this final rule with regard to similarly configured tractors. Using the VRTC three-axle Peterbilt truck as a guideline, which had GAWRs of 18,000 pounds for the steer axle, 44,000 pounds for the tandem drive axles, and a total GVWR of 62,000 pounds, we considered the installation of a lift axle placed in front of the drive axles with a GAWR of 20,000 pounds. We note that this is on the upper end of axle weight ratings for lift axles; many lower GAWR ratings for lift axles are also available. The GVWR would now be increased to 82,000 pounds, and although the agency has no full vehicle test data, the loaded-to-GVWR service braking performance of the tractor would not be expected to decrease substantially from the performance in the original three-axle configuration (this vehicle was tested with three axles at 62,000 pounds GVWR and was able to stop in 224 feet when equipped with disc brakes at all wheel positions). We make this assumption because of the auxiliary brake requirements FMVSS No. 121, which mandate high levels of fade resistance and stopping power requirements.

Although the agency does not have data on the dynamic load increases on lift axles under hard braking, we expect load transfer increases (if any) to be minimal. This assumption is based on prior analyses that show the greatest load transfer to be on the steer axle, while drive axles (and trailer axles in the case of combination vehicle tests) typically have small decreases in vertical load under hard braking.[41] Thus, it would not be expected that lift axle foundation brakes would need to be substantially increased in size to provide the needed retardation force to meet the new stopping distance requirements.

TMA provided data that confirmed NHTSA's belief that lower-GVWR severe service tractors with four or more axles are capable of meeting a 250-foot stopping distance requirement, even when using drum brakes on the drive axles. We note that the TMA supplemental data, supplied in October 2006, for the 66,000-pound GVWR three-axle severe service tractor showed that this tractor was able to achieve a stopping distance of 229 feet in a hybrid configuration (disc brakes on steer axle only), and its drive axles were rated at 23,000 pounds GAWR each. Therefore, adequately performing drum brakes that

[40] TMA comments of October 12, 2006. Docket No. NHTSA–2005–21462–34.

[41] Docket No. 21462–2005–33 (*see* slide 8 of TMA's presentation for typical load transfer of a tractor-trailer combination vehicle during hard braking).

are typically installed on auxiliary axles should be available for a 20,000-pound auxiliary axle; in other words, it is not expected that disc brakes would be needed on the auxiliary axles in order to achieve satisfactory performance.

Next, we turn to TMA comment that dynamic load transfer to the steer axle may be an issue for some severe service tractors with four or more axles, such as the twin-steer example described above with a GVWR above 85,000 pounds. Using a 20,000-pound steer axle GAWR as an example, the agency believes there is not an adequate installation envelope to install a large enough disc brake to be able to meet a 250-foot stopping distance requirement for these vehicles. There are a number of constraints on the installation envelope that limit the diameter of the disc rotor and caliper assembly that can be fit within the inside diameter of the wheel rim, including: (1) The articulation of the spindle and foundation brakes needed for adequate steering cut; (2) vertical clearance with chassis components during dynamic steer axle loading (compression during hard braking); and (3) the size of the wheels. The agency agrees with TMA that, based on all available information, foundation brakes that could provide loaded-to-GVWR stopping distance performance in the 250-foot range are not available for these tractors. Further, NHTSA is not aware of sufficient test data available for such tractors fitted with the largest disc brakes to confirm this (noted in the TMA supplemental comments citing tests of prototype disc brakes that have not been tested extensively). Because of these inherent limitations of the steer axle brakes, the agency has decided to adopt requirements for stopping distance of tractors with four or more axles and a GVWR greater than 85,000 pounds of 310 feet (rather than 250 feet) along the lines of the requirements for single-unit trucks of this size. The agency believes, for the same reasons as discussed above, that tractor-trailers can achieve similar service braking performance as similar single-unit trucks.

e. Two-Axle Severe Service Tractors

We also respond to TMA's April 2006 comments regarding what it identified as a distinct class of severe service two-axle tractors, which TMA defined as a two-axle truck tractor having a drive axle GAWR of 23,000 pounds or more. Based on our review of the commenters' data, the agency does not believe that the commenters have provided sufficient information to justify allowing these tractors to be subject to a less rigorous stopping distance requirement than other two-axle tractors, and that the proposed specifications for improved stopping distances are practicable.

Commenters' test data show that two-axle truck tractors with a higher GVWR have similar braking performance to other two-axle tractors. TMA provided test data for one severe service two-axle tractor with standard 16.5″ x 5″ S-cam drum brakes on the steer axle and standard 16.5″ x 7″ S-cam drum brakes on the drive axle.[42] The stopping distance for this tractor was approximately 315 feet, so this brake configuration would not meet a 250-foot stopping distance requirement. However, this test result does not make it necessary to exclude severe service tractors from the improved stopping distance requirement entirely.

First, we note that the two-axle tractor cited by TMA is not a typical severe service tractor because it does not have a GVWR in excess of 59,600 pounds, thereby putting it outside the standard definition of a severe service tractor.

Second, of particular significance is the fact that this test result does not show how this vehicle would perform with upgraded brakes, specifically disc brakes. Disc brakes are the type of brakes that have been demonstrated to typically provide the shortest stopping distance. Therefore, the agency declines to use the TMA data on this ''severe service two-axle tractor'' in formulating the requirements of this final rule.

We do not have test data for this specific configuration of vehicle equipped with disc brakes. However, considering that the achieved stopping distance of the severe service two-axle tractor is roughly equivalent to what many other two-axle tractors can achieve when equipped with standard S-cam drum brakes at all wheel positions,[43] NHTSA believes that ''severe service two-axle'' tractors will be able to achieve similar enhancements using enhanced S-cam drum brakes or disc brakes in lieu of standard S-cam drum brakes. Therefore, the agency is not specifying a longer stopping distance for these vehicles. However, for reasons discussed below, the agency is providing a longer lead time for all two-axle tractors.

f. Summary of Severe Service Tractors

Based upon the above analysis, the agency is setting the loaded-to-GVWR stopping distance requirements for severe service tractors as follows:

- A tractor with three axles and a GVWR of 70,000 pounds or less must stop within 250 feet.
- A tractor with three axles and a GVWR greater than 70,000 pounds must stop within 310 feet.
- A tractor with four or more axles and a GVWR of 85,000 pounds or less must stop within 250 feet.
- A tractor with four or more axles and a GVWR greater than 85,000 pounds must stop within 310 feet.

Further, the agency does not recognize a class of two-axle severe service tractors, and notes that all two-axle tractors are required to meet a 250-foot stopping distance requirement.

The agency believes that these requirements will enhance vehicle safety by ensuring that the vast majority of tractors (estimated to be approximately 99 percent of annual tractor production) will meet a requirement with a 30 percent reduction in stopping distance. The remaining one percent of tractors, which are high-GVWR severe service tractors, will be required to meet a requirement with a 13 percent reduction in stopping distance, which is equal to the current required stopping distance performance for single-unit trucks. Finally, those tractors with any axle with GAWR of 29,000 pounds or greater will continue to be excluded from the FMVSS No. 121 requirements.

4. Braking Performance of Tractors With Improved Brake Systems in the Unloaded Weight Condition

In the NPRM, the agency proposed to reduce the existing FMVSS No. 121 unloaded weight stopping distance for heavy truck tractors from 335 feet by 20 percent (*i.e.,* to 268 feet) to 30 percent (*i.e.,* to 235 feet). Testing in the unloaded weight condition (also known as lightly-loaded vehicle weight or LLVW) is performed without any trailer attached to the tractor (*i.e.,* bobtail condition), plus up to an additional 500 pounds allowed for the test driver and vehicle instrumentation. In addition, up to 1,000 pounds is allowed for a roll bar structure. The tractor is required to meet the unloaded stopping distance requirement for at least one out of six test stops.

One potential issue that arises when reducing stopping distance in the lightly-loaded condition is the issue of wheel lockup, as there is far less available tire-road friction than in the loaded-to-GVWR condition. Requirements in FMVSS No. 121, S5.3.1, paragraphs (a) through (d), specify allowances for wheel lockup during either a service brake stopping distance test in the loaded or unloaded

[42] Docket # NHTSA–2005–21462–26.

[43] Docket # NHTSA–2005–21462–26.

condition, and applies to trucks, tractors, and buses. At speeds above 20 mph, wheel lockup on certain axles is only permitted to be momentary (less than one second), while unlimited wheel lockup on auxiliary axles is permitted. At speeds below 20 mph, unlimited wheel lockup is permitted on any wheel. These wheel lockup provisions were necessary before ABS was mandated, to ensure that the test driver could bring the vehicle to a stop without loss of control due to unlimited wheel lockup. In the case of a tractor in the unloaded condition, the drive axle wheels are very easy to lock up, as there is little vertical load on them. Prior to the advent of ABS, some tractors were equipped with bobtail proportioning valves to reduce the brake pressure to the drive axles in the unloaded condition and make it easier to stop the vehicle within the required distance (using more steer axle brake power, where a substantial vertical load exists), and also to improve the on-road drivability of bobtail tractors.

However, since March 1, 1997, all tractors have been required to be equipped with ABS on at least one steer axle and one drive axle, which has virtually eliminated wheel lockup in tractors. While the relevant FMVSS No. 121 requirement states that only one rear axle of a tractor needs to be equipped with ABS, most tractors also indirectly control the wheels on the other rear axle in the case of tandem drive axles, or they employ direct ABS control of both tandem drive axles. In the case of a severe service truck or tractor with non-liftable auxiliary axles mounted rearward of the tandem drive axles, an auxiliary ABS system may be necessary on those auxiliary axles to meet the wheel lockup provisions in S5.3.1, but trucks and tractors with liftable auxiliary axles typically do not need to have ABS on those axles. In addition, the braking-in-a-curve test in S5.3.6 was included in FMVSS No. 121 to ensure that the ABS provides adequate vehicle control and stability when in a curve on slippery pavement and subjected to a full-treadle brake application. The braking-in-a-curve test ensures that the ABS is regulating the braking forces at the wheels to keep the tires rolling, so they can generate the lateral forces required for maintaining the curve, and the vehicle does not plow out of the curve during braking.

In addition, ABS systems can help greatly decrease the stopping distances for lightly-loaded tractors. Since the addition of these ABS requirements, conducting braking tests on trucks and buses in the unloaded condition has been greatly simplified. Rather than requiring the driver to modulate the brake treadle to try to achieve the required stopping distance while staying within the wheel lockup provisions in S5.3.1, the test driver can make a full treadle brake application at the initiation of the stop and the ABS ensures that the wheel lockup provisions are met. The result is much greater braking efficiency and shorter stopping distances compared to driver-modulated stops. This is evident by reviewing the VRTC test data for tractors tested in the unloaded condition. Compared to the FMVSS No. 121 requirement of stopping within 335 feet (unloaded condition), typical bobtail tractor stopping distances for tractors with improved foundation brake systems are approximately 180 feet, or 46 percent lower than the current 335-foot requirement. As an example, VRTC tests of the tractors equipped with hybrid disc/drum brakes and all-disc brakes resulted in unloaded stopping distances ranging from 176 to 183 feet (six tests), meeting a target stopping distance of 235 feet (a 30 percent reduction from the current stopping distance requirement) with margins of compliance ranging from 25 to 22 percent.

It is likely that even current standard drum brakes have the necessary torque to permit a substantial reduction in tractor stopping distance in the lightly-loaded condition. VRTC tests of the 6x4 severe service truck (used as a surrogate example of a severe service tractor) with all disc brakes (224-foot loaded-to-GVWR stopping distance) stopped in the lightly-loaded condition in 172 feet, meeting a target distance of 235 feet with a 27 percent margin of compliance. Even when tested with brake configurations that did worse in the loaded-to-GVWR test condition (all drum brakes and disc/drum brake hybrid configurations), the unloaded stopping distances were 172 feet and 178 feet. This indicates that stopping performance in the unloaded condition for this severe service vehicle was not significantly sensitive to the configuration of the foundation brakes, since any combination of foundation brakes could fully utilize the available tire-road friction of the vehicle in its light weight condition. Further, it demonstrates that the ABS system (6S/6M on this vehicle) delivered good efficiency in keeping the braking force near the peak of available tire-road friction.

Very few comments were received on the agency's proposal to reduce the stopping distance in the lightly-loaded condition by 20–30 percent. No test data were submitted on stopping performance of tractors equipped with improved braking systems tested in the lightly-loaded condition. Several commenters made recommendations. TMA and ArvinMeritor recommended 25 percent reductions in lightly-loaded stopping distances, and IIHS recommended a 30 percent reduction, but no data were provided to support these recommendations. TMA stated that currently under unloaded conditions, tractors experience some wheel slip at brake applications of 30 psi, and that if the steer axle brake is improved to meet a 30 percent reduction in stopping distance, rear wheel slip might be experienced at as little as 20 psi. However, considering that TMA is recommending a 25 percent decrease in stopping distance in the unloaded condition, we believe the shorter stopping distance achieved more than compensates for the slight increase in ABS activations under these conditions.

Based on the available data, the agency believes that a longer lightly-loaded stopping distance is not necessary for the highest-GVWR severe service tractors. Those vehicles have been provided with some relief (310-foot loaded-to-GVWR stopping distance requirement, as opposed to 250 feet) for tests in the loaded condition because of the torque-generating limitations of foundation brakes. However, the agency does not believe that any relief is needed for these tractors when tested in the lightly-loaded condition. The definition of a ''truck tractor'' in 49 CFR 571.3 specifies that it is ''primarily for drawing other motor vehicles and not so constructed as to carry a load other than a part of the weight of the vehicle and the load so drawn.'' Therefore, tractors in the lightly-loaded condition have extremely light load weights relative to their GVWR since they do not have any load-carrying capability outside of trailer towing. Tractors in the lightly-loaded condition, including the heaviest GVWR severe service tractors, can therefore achieve braking performance similar to each other.

In this final rule, the agency is setting the heavy truck stopping distance requirement in the lightly-loaded condition at 235 feet, a 30 percent reduction from the existing FMVSS No. 121 requirement. The available test data, while limited in terms of the number of tests conducted, indicate that margins of compliance of 20 percent or more can readily be attained. Severe service tractors that have lift axles would be expected to perform similarly, as the lift axles would be in the raised position during this test. To the agency's knowledge, severe service tractors

equipped with improved brake systems that have non-liftable auxiliary axles, or tridem drive axles, have not been tested, but are expected to perform similarly or with only slightly longer stopping distances (*e.g.,* due to driveline and axle interactions on a tridem drive system, or slightly lower tire traction due to aggressive off-road tread patterns). However, due to the large margins of compliance already achieved, the agency believes that the 235-foot requirement is practicable for tractors that might have slightly longer stopping distances than the typical examples tested.

One minor issue that the agency is addressing is the lack of a fuel tank fill specification in FMVSS No. 121. Vehicle curb weight is measured with all fluid levels and reservoirs (*e.g.,* antifreeze, windshield washer fluid) at the recommended levels (*i.e.,* filled to capacity or other designated fill levels). The agency reviewed FMVSS No. 121 for a specification on the vehicle's fuel tank fill level during road tests and found that this is not addressed. In contrast, FMVSS No. 135, *Light Vehicle Brake Systems,* specifies under the vehicle test conditions in paragraph S6.3.2 that the fuel tank shall be filled to 100 percent of capacity at the beginning of testing and that it may not be less than 75 percent of capacity during any part of the testing.

The agency is adding a similar requirement to FMVSS No. 121 in this final rule. The lack of a fuel tank fill specification adds a possible source of test variability, such as when testing in the lightly-loaded condition where the additional weight of the fuel may be advantageous, in that it may increase the tractor test weight and thus provide additional tire friction at the drive axles. Therefore, by specifying that the fuel tank(s) must remain at least 75 percent full during all portions of the brake testing, test variability is reduced. Test severity is not increased as a result of providing this specification. We note that for the loaded-to-GVWR tests, this specification permits up to 25 percent of the fuel to be used over the course of testing without continually adding ballast or refueling the vehicle.

5. Emergency Braking Performance of Tractors With Improved Brake Systems

a. Background Information on the Emergency Braking Performance Requirement

In the NPRM, the agency proposed to reduce the emergency braking stopping distance in FMVSS No. 121 by 20 percent to 30 percent, from the current 720 feet to a value between 580 feet and 504 feet. However, in light of concerns raised in the comments, NHTSA has decided against adoption of any change in the standard's emergency brake stopping distance performance requirements.

The emergency brake system requirements in FMVSS No. 121 are tested by inducing a single failure in the service brake system of a part designed to contain compressed air, excluding specific components (*i.e.,* a common valve, manifold, brake fluid housing, or brake chamber housing).

Test data from VRTC tests of tractors in the emergency braking mode were provided in Table II of the NPRM. These tests were conducted with failed primary systems, and, therefore, the data represent the performance of tractors stopping using only the steer axle brakes. The longest stops measured were with standard, 15″ x 4″ S-cam drum brakes (636 feet for one tractor and 432 feet for the other tractor). As steer axle brake improvements were made, emergency stopping distance also improved. The best stops were with disc brakes on the steer axle (four tests), which ranged from 276 to 303 feet, demonstrating very good margins of compliance against the 720-foot FMVSS No. 121 requirement. Thus, the agency's proposed requirements of 504 feet to 580 feet for emergency brake stopping distance appeared to be achievable with improved brake systems.

b. Commenters' Responses to Proposed Emergency Braking Performance Requirement

Several commenters (Bendix, ArvinMeritor, International) recommended that the agency leave the standard's emergency brake stopping distance requirements unchanged. Bendix argued that increasing the torque output on foundation brakes would have a corresponding decrease in emergency brake stopping distance, but only if the improved brakes are used in the emergency stopping test. Thus, a tractor that has had its steer axle brake improved to meet a 30 percent reduction in stopping distance would exhibit no enhancement in emergency braking performance if the front brake circuit (secondary air system) were disabled. This would potentially cause the vehicle to fail that portion of the emergency brake stopping distance test, even with improved foundation brakes. Bendix stated that the agency has not provided evidence of a need for improved emergency braking system performance in its analysis. ArvinMeritor commented that emergency braking performance in the failed secondary air system test (*i.e.,* using only the drive axle brakes, which have a very low weight when measured in the unloaded condition) is already limited by tire-road adhesion today, thus making further improvements impossible due to wheel lockup.

In its comments, TMA stated that the emergency braking performance of tractors with improved brake systems could lead to more aggressive lockup of wheels on the drive axle(s) during emergency braking. According to TMA, increased use of ABS could cause the emergency braking performance with improved drive axle brakes to be worse than with current foundation brakes. TMA stated that truck manufacturers would need to modify the ABS algorithms to allow more drive wheel lockup to meet the agency's proposed emergency brake stopping distance requirements, and that this would be detrimental to vehicle stability and control. Further, TMA commented that the likelihood of a crash-imminent situation occurring at the same time as a failure in either the primary or secondary air systems is immeasurably small.

Although somewhat counterintuitive, the agency acknowledges that the failed secondary system braking performance of tractors might be negatively impacted by improved brake systems, as suggested by the commenters. Accordingly, we have decided that not to make any changes in the emergency brake system stopping distance requirements at this time. Maintaining the status quo for emergency brake stopping requirements is not expected to have any negative effect on achieving the estimated safety benefits of the overall heavy truck stopping distance rulemaking, because tractors operating in bobtail mode and experiencing an emergency braking situation are not significant contributors to the crash problem that has been identified.

ii. Ancillary Issues Arising From Improved Brake Systems

1. Stability and Control of Tractors With Improved Brake Systems

Several commenters (TMA, HDBMC, ATA) brought up a number of issues relating to the stability and control of tractors that arise from installation of improved brake systems pursuant to the agency's proposal to improve heavy truck stopping distance performance requirements by 30 percent. These issues included potential problems with lateral stability (especially in two-axle, short wheelbase tractors), excessive steering wheel pull, and excessive steer axle suspension jounce (compression). Commenters stated that these problems

would be expected to apply to all tractors, but commenters expressed their opinion that such problems would likely be especially acute in two-axle tractors, particularly in those with a shorter wheelbase.

In a meeting held with NHTSA on March 29, 2006, representatives of TMA, HDBMC, and ATA discussed several issues involving tractors with improved brake systems that were included in presentation materials available for review in the DOT docket.[44] One issue raised in that presentation involved computer simulations provided by TMA which were conducted by Freightliner of two tractors in a braking-in-a-curve maneuver (*see* Slide 10). In that maneuver, the tractor with more powerful foundation brakes (a hybrid configuration of front disc brakes and rear drum brakes) experienced a jackknife loss-of-control, while the tractor with standard drum brakes remained stable. According to TMA's comments, this indicated that installing more powerful foundation brakes to improve performance in the straight-line stopping distance test could have the unintended consequence of inducing stability problems in some on-road driving situations. Thus, TMA raised concerns about the stability and control of short-wheelbase two-axle tractors when more powerful foundation brakes are applied. Although not depicted in the presentation slides, the following were the test conditions for the above scenario, as described by TMA at the meeting:

- The curve has a radius of 500 feet and was a high-friction dry surface (0.9 peak coefficient of friction).
- The entry speed of the tractor was 48 mph.
- The tractor was connected to a tandem-axle trailer, and the trailer was rear-loaded to 34,000 pounds weight on the trailer axles.
- The trailer was unbraked.
- A full-treadle brake application was used.

While the maneuver described by TMA has some similarities to the FMVSS No. 121 stability and control test requirement that is used as a pass-fail measure to assess the performance of a tractor's ABS (*see* S5.3.6.1), the agency does not believe that the TMA test is appropriate for assessing the vehicle's stability, due to vital differences in the test procedures, as explained below. In the FMVSS No. 121 test, the road surface is wetted and slippery (0.5 peak coefficient of friction as opposed to 0.9), and the entry speed is typically between 30 and 34 mph, as opposed to 48 mph. The loading condition of the trailer in the FMVSS test is also different. Although an unbraked FMVSS No. 121 control trailer is used, in the FMVSS test, the trailer is front loaded (*i.e.,* loaded over the kingpin at the front of the trailer) in order to load the tractor to its GVWR. In contrast, in the TMA test, the trailer was rear loaded, which puts the majority of the weight on the unbraked trailer axles rather than the tractor's drive axles. This maneuver deprives the drive axles of braking traction, and constitutes a worst-case braking scenario.

At the March 29, 2006 meeting, the agency questioned whether TMA's simulation is representative of a real-world driving situation. As explained below, the simulation appeared to the agency to be a combination of several worst-case scenarios, the first of which involves the high entry speed of the tractor that, for this curve, approaches the rollover threshold of some high-center-of-gravity tractor-trailer combinations. Second, the trailer is rear-loaded, which is not a safe operating practice. (In general, trailers should not be rear-loaded because the tractor drive axles will be too light during braking and/or acceleration.) Third, the trailer brake system was deactivated. Finally, the test assumes a full-brake application which, on the highway, represents a panic braking situation. As a result, the agency is not convinced by TMA's comment that improving the steer axle brakes will have a negative impact on lateral stability.

The agency has further reason to doubt TMA's assertion that lateral stability will be negatively impacted by improving the tractor's foundation brakes. In its comments, TMA referred to a Society of Automotive Engineers (SAE) technical paper, *A Study of Jackknife Stability of Class VIII Vehicles with Multiple Trailers with ABS Disc/Drum Brakes* (SAE 2004–01–1741). TMA stated that this study, consisting of vehicle simulation modeling to evaluate the stability of two-axle tractors towing double trailers, found that two-axle tractors with more aggressive brakes either jackknifed or ran off the road under various combinations of conditions. However, based upon the agency's review, that study seems to indicate that more powerful foundation brakes were not a cause of the jackknifing, but rather that the cause was a lack of tractor ABS. In analyzing this SAE report, the agency notes that only when the tractor ABS was disabled did instability occur, and it occurred regardless of whether the tractor was equipped with S-cam drum brakes or disc brakes. However, the type of instability exhibited varied depending upon the types of foundation brakes installed on the tractor; specifically, tractors with all drum brakes went into a jackknife (oversteer), while the tractors with disc brakes tended to plow out of the curve (understeer).

The only benefit of less powerful brakes indicated by the tractor simulations with inoperative ABS was that the lane departure occurred sooner in the maneuver when the tractor was equipped with disc brakes. We do not believe that this argument justifies a requirement that would result in installation of weaker foundation brakes. Instead, we believe that this study is more indicative of the importance to fleets in maintaining ABS on tractors, trailers, and converter dollies. It is also important to note TMA's comment that 4 to 16 percent of tractors and 8 to 26 percent of trailers in service have non-functioning ABS or ABS warning lamps. While this rulemaking does not relate to in-service maintenance issues (issues which generally fall under FMCSA's jurisdiction), proper maintenance is very important.

The agency conducted an additional investigation to determine the validity of the TMA testing regarding lateral instability. To further investigate suggestions regarding the potential for increased lateral instability, the agency held a meeting with the TMA at the VRTC in East Liberty, Ohio, on July 11, 2006.[45] At that meeting, the agency presented results of several braking-in-a-curve simulations performed at VRTC using its Truck Sim vehicle dynamics modeling software to estimate the scope of potential vehicle instability problems for two-axle tractors. In a high-friction (*i.e.,* 0.9 coefficient of friction, or mu), 500-foot radius curve braking test with a rear-loaded, unbraked trailer, a two-axle tractor with a very short wheelbase of 130 inches experienced a jackknife condition. Two other tractors with short wheelbases (142 and 148 inches) were marginally stable, meaning they were not under full control, but did stay within the 12-foot-wide lane. For comparison purposes, we note that a three-axle tractor with a 190-inch wheelbase remained stable during this maneuver. The agency also performed slippery-surface (low friction) tests at 45 mph, and found that a short-wheelbase tractor (148 inches) spun out both with standard drum brakes and with disc brakes. This test also caused a standard three-axle tractor (with drum brakes) to spin out. For a final comparison, we

[44] *See* Docket No. NHTSA–2005–21462–33.

[45] Docket No. NHTSA–2005–21462–36.

note that during a previous track test, even a high-performance sports car spun out during this maneuver at 45 mph. Again, these results demonstrated to the agency that the TMA test was too rigorous for any typical vehicle to be able to navigate the curve.

Further, we note that in its supplemental comments from October 2006, TMA submitted information about tests on four two-axle tractors that showed substantially fewer problems of lateral instability than had been suggested earlier. The results of these tests showed that two-axle tractors are capable of maintaining a high degree of lateral stability when equipped with improved foundation brakes. TMA acknowledged that these vehicles did not exhibit controllability or handling problems. Nonetheless, TMA suggested in its supplemental comments that due to the relatively large amount of testing and validation required for issues such as brake lining, brake chamber sizes, slack adjuster lengths, tire properties, ABS algorithms, and potentially electronic stability control (ESC) systems, additional lead time for two-axle tractors may be required.

In the end, after considering all of the available information on stability and control that affects shorter wheelbase, two-axle tractors, the agency has decided that an allowance for longer stopping distances is unnecessary. Only under the most severe conditions was instability found to be an issue, and rarely did it correlate with the improved braking systems. Nonetheless, the agency is aware that there is a greater need for additional design efforts and validation on two-axle tractors, so in this final rule, we are providing more lead time for manufacturers to achieve compliance with the new stopping distance requirements for these tractors, thereby providing manufacturers with more time to identify and remedy potential problems. (The issue of the compliance date is addressed in further detail below in Section III, c, viii.)

2. Brake Balance Issues on Tractors With Improved Brake Systems

Because the main factor in generating the additional brake torque to achieve a reduced stopping distance is the addition of more powerful steer axle brakes, the effects of more powerful steer axle brakes are raised by this rulemaking. These issues involve the balance of braking power generated by different tires, as well as concern that the new designs could engender off-balance brake systems. Two issues raised included the difference in brake torque generated by the steer and drive axles, and the potential for increased steering wheel pull resulting from more powerful steer axle brakes. The agency addresses each of those concerns below.

Several commenters asserted that the mandate to decrease stopping distance would necessitate less powerful drive axle brakes on two-axle tractors, because dynamic loading would cause the weight on the drive axle to be substantially less during hard braking.[46] Freightliner commented that because 31 percent of the rear axle load will transfer to the steer axle during hard braking, two-axle tractors will require less powerful drive axle brakes than they currently have. While Freightliner did not provide a rationale for this in its comment, it is presumed that this would be to improve brake balance at maximum braking, without having to cycle the ABS on the drive axle. Similarly, ATA commented that it may be necessary to reduce drive axle brake power on two-axle tractors to compensate for the weight transfer to the steer axle. In its original comments, TMA also argued that decreasing the drive axle torque by 20 percent would be necessary to prevent ABS activation, which could result in even longer stopping distances. All of these commenters argued that the combination of much more powerful steer axle brakes and less powerful drive axle brakes would result in a vehicle that would perform poorly under real-world conditions, arguing that the agency should not consider the issue of stopping distance in isolation.

The agency's test data, however, do not fit with these statements. The agency's data indicate that a reduction in drive axle torque would not be necessary to improve stopping distances in hard-braking situations. Test data from VRTC[47] tests on a two-axle tractor showed that after installing more powerful steer axle disc brakes, installing more powerful drive axle brakes only served to shorten overall stopping distance. The agency also notes that this improvement occurred without stability or control problems when tested both in the lightly-loaded and loaded-to-GVWR conditions as specified in the FMVSS No. 121 braking-in-a-curve test. In nearly every test, whether using two-axle, three-axle, or severe service tractors, the tractors that achieved the shortest stopping distances were those equipped with more powerful disc brakes at all wheel positions. In all tests, the ABS was found to perform very efficiently in limiting wheel lockup and allowing tractors with improved braking systems to maintain good stability in both straight line and braking-in-a-curve tests.

On a related topic, TMA also commented that more powerful steer axle brakes could contribute to instability through steering wheel pull. Steering wheel pull can occur when the steer axle brake on one side of the vehicle is able to produce more braking power than the brake on the other side. This is an issue that affects all tractors with enhanced steer axle brakes, not just two-axle tractors. TMA stated that on ''split-mu surfaces,'' *i.e.,* ones where one side of the road has less friction than the other (such as transitional surfaces, or when one side of the road is wet), imbalances in steer axle brakes are magnified and drivers must provide sufficiently more frequent and aggressive steering wheel input to keep the vehicle on its intended path. TMA argued that if the power of the steer axle brakes were increased, the potential effects of side-to-side imbalance would also increase.

The agency believes that disc brakes, in general, will provide better steer axle brake balance than current standard drum brakes do. This is because for any given air pressure, the torque output of drum brakes can vary by 30 percent due to hysteresis,[48] lining variations, brake adjustment, and drum condition (*e.g.,* eccentricity and being out-of-round). In comparison, for any given air pressure, disc brakes typically do not have variations in torque output exceeding 10 percent. Thus, in a tractor with two disc brakes on the steer axle under braking, there would typically be less steering wheel pull during braking, as compared to a tractor using drum brakes. However, the agency is aware that if a manufacturer chose to upgrade the steer brakes to enhanced S-cam drum brakes, there is a potential for more steering wheel pull than with standard S-cam drum brakes.

Steering wheel pull on split-mu road surfaces is a potential problem with any type of brake (although most significantly with enhanced drum brakes), but there are various steps that

[46] ''Dynamic Loading'' refers to the temporary redistribution of downward force during a hard braking incident. During rapid deceleration, proportionally more weight is borne by the front of the tractor (the steer axle) and less is borne by the rear (the drive axle and the trailer axle). In two-axle tractors, where proportionally more weight is borne by the steer axle than in other designs, the concern is that during hard braking, too little weight will be borne by the drive axles, and the available tire-road friction will not be high enough to allow them to utilize all of the available brake torque. In these situations, the ABS would be activated, lessening those brakes' effectiveness.

[47] Docket #NHTSA–2005–21462–39, p. 25.

[48] Hysteresis refers to friction in the foundation brake components.

manufacturers can take to ameliorate the problem. One approach is to utilize a modified individual wheel ABS control strategy to reduce the pressure to both steer axle brakes in the event the wheel on the low-friction surface approaches lockup. In its comments, Meritor Wabco stated that most of today's antilock systems use Modified Individual Regulation (MIR) on the steer axle to reduce the yaw moment produced when different levels of torque are generated by the steer axle brakes, a situation that typically occurs during braking on split-mu surfaces. According to the commenter, after a short amount of time, the pressure can be adjusted to match the friction at each wheel. This action can result in steering wheel pull, but it is added incrementally, so it does not surprise the driver. This method of ABS control ensures that the driver is able to easily control the vehicle during the maneuver, and it also produces a shorter stopping distance by taking advantage of the higher braking forces generated by the wheel on the high friction surface. Thus, the agency believes that the potential for additional steering wheel pull is small, and when combined with advancements in ABS and the use of disc brakes, we have decided that this is not a reason to adopt a less stringent stopping distance requirement.

3. Brake Balance and Trailer Compatibility Issues for Tractors With Improved Brake Systems

a. Brake Balance Between the Steer and Drive Axles

''Brake balance'' refers to the concept that brakes on the steer axle and drive axle(s) should provide approximately equal shares of the retardation force in response to the dynamic loads placed on them during hard braking. Currently, the drive axle brakes of many tractors produce a large percentage of the total brake torque during heavy braking, as steer axle brakes are designed for long life. When addressing the issue of good brake balance on a tractor that is loaded to its GVWR and subjected to a full treadle brake application, the agency must take into account that the vertical load on the steer axle can increase by up to 50 percent or more. It is therefore expected that manufacturers will meet the reduced stopping distance requirements in this rulemaking primarily by improving the brake torque of steer axle brakes, thus allowing good brake balance during hard braking applications.

The agency notes that a bobtail tractor (*i.e.,* with no trailer) will generally have poor brake balance. This is because the drive axles have a very low vertical loading, while the steer axle is typically closer to its rated capacity. In that case, a tractor is reliant on its ABS to prevent drive axle wheel lockup during moderate and hard brake applications. This rulemaking will not have a substantial effect on the brake balance of tractors operated in the bobtail condition.

Achieving the desired loaded-to-GVWR, limit-of-performance stopping distance reduction, as well as brake balance, will generally require upgrades to both the steer and drive axles of a truck tractor. The benefits of this rulemaking will primarily be achieved by increasing the steer axle brake power on tractors. As previously discussed, small improvements are also likely to be needed on tractor drive axles, as test data show there were no tractors complying with 30 percent reductions in stopping distance, with good margins of compliance, using standard-sized 16.5″ x 7″ drive axle S-cam drum brakes. Agency testing has shown that increasing the drive axle brake power allows better utilization of the available tire friction and reduces brake fade during a single high-speed stop and also during repetitive stops at all speeds.

Several organizations commented on the issue of brake balance between the steer and drive axles. HDMBC stated that improvements in brake torque will mainly be on the steer axles of tractors, and this will result in the steer axle doing a larger share of combination braking work that could affect brake wear balance. However, HDBMC did not recommend that NHTSA take any particular regulatory action in light of this. Haldex stated that more evaluation will be needed to determine the effects of improved braking systems on brake balance.

The agency agrees that the majority of improvements in tractor braking performance will be gained by significant increases in steer axle brake torque. The agency believes that this will result in improvements in the tractor's brake balance during maximum effort braking, as under current conditions, standard steer axle brakes do not have the same power as drive axle brakes. The agency also believes that modest increases in tractor drive axle brake torque will be necessary for most tractors, but we do not think that this will cause significant brake balance issues, as some commenters argued. In reaching this conclusion, the agency notes that the available test data show that one of the best-performing three-axle tractors (used in the Radlinski tests) was a tractor currently used in regular fleet service, so we presume that this vehicle exhibited acceptable brake balance in terms of both performance and maintenance costs. We also note that the enhanced drive axle drum brakes on this tractor (16.5″ x 8.625″) were primarily designed for long service life. This is achieved by operating at lower temperatures during low-pressure braking, thereby reducing lining wear that is temperature-sensitive.

In its comments, ArvinMeritor argued that reductions in stopping distance of over 25 percent would adversely impact brake balance and would likely result in significant dissatisfaction on the part of end users. ArvinMeritor stated that these concerns specifically include brake lining life reductions, brake drum durability problems, more frequent maintenance, and reduced vehicle uptime as a result of these issues. ArvinMeritor also stated that tractor-trailer compatibility will be a significant issue if the standard were to require stopping distance to be reduced by more than 25 percent from current levels. The commenter claimed that the mixing of new truck tractors with either new or old trailers would represent a real and disruptive issue for the trucking industry, although it failed to state why it would cause disruption.

Without any supporting data for ArvinMeritor's comment, the agency cannot accept its above-stated position, particularly given the substantial evidence in the record that tractor-trailer compatibility will not be negatively affected by the improved foundation brake systems on new truck tractors. Although the agency is not aware of any published reports on the compatibility issue of tractors with improved brake systems being used with the existing trailer fleet, we note that the tests conducted by Radlinski (using a three-axle tractor with enhanced S-cam drum brakes on both the steer and drive axles) were with a production vehicle used in regular fleet service. Those tests were conducted in 2003, and tractors such as the one tested have been in use since at least that time, with no indications of brake balance or trailer compatibility problems of which the agency is aware. Further, in 2004, the agency (in concert with other government agencies and private industry partners under cooperative agreement contract) completed field tests of 50 Volvo three-axle tractors equipped with disc brakes in regular fleet service.[49] The disc brakes were one component of several crash avoidance enhancement systems installed on these tractors. No compatibility or brake

[49] *See http://www.itsdocs.fhwa.dot.gov/JPODOCS/REPTS_TE/14349.htm.*

balance issues were found among these vehicles during extensive operation with trailers equipped with standard, 16.5″ x 7″ S-cam drum brakes. Brake lining wear rates on the tractors were lower than those of standard drum brake components, and similar to the wear rates of extended life (enhanced) S-cam drum brakes.

b. Tractor-Trailer Compatibility

''Tractor-trailer compatibility'' is closely related to brake balance and has a similar definition. Traditionally, that term has been defined to mean equal truck tractor drive axle brake operating conditions and life relative to trailer axle brake operating conditions and life. The compatibility issue is important for end-users of tractor-trailers, as they desire even wear on trailer and tractor drive axle brakes. One commenter, ArvinMeritor, stated that typically, tractor-trailer compatibility does not include steer axle brakes, due to comparatively lower torque output and resulting longer life compared to the other brakes in the combination. The agency understands that under the current stopping distance requirements, typical steer axle drum brakes (15″ x 4″) have comparatively low torque output and long life compared to brakes at other wheel positions.

Several commenters argued that the majority of braking takes place at pressures between 10 psi and 15 psi, as opposed to full treadle brake applications. HDMBC commented that at these pressures, balanced brake wear is expected between the truck tractor and trailer by the end user. HDBMC stated that further evaluation may be needed in light of the increased percentage of braking contributed by the truck tractor.

Similarly, many commenters discussed how the improved stopping distance requirements in the agency's proposal would require the tractor to take on an increased percentage of the total braking of the truck tractor/trailer combination. Haldex and HDBMC both raised this issue, although neither recommended that NHTSA take any particular regulatory action in light of this issue. HDBMC stated that its purpose in commenting on this issue was to highlight the impact that reduced stopping distance requirements will have on maintenance costs and end-user acceptance of new vehicles, while Haldex merely stated that brake balance will require more evaluation.

ATA commented that tractor-trailer compatibility should not be an issue if stopping distance were reduced by only 20 percent. However, ATA did not comment on potential compatibility issues for a 30 percent reduction. ATA stated that in the case of two-axle and severe service tractors, there could be operational or safety issues associated with the reduced stopping distance proposal, and, therefore, a delay in the implementation of new requirements for those vehicles would be needed to overcome these issues.

ArvinMeritor relayed significant concerns regarding tractor-trailer compatibility in its comments. ArvinMeritor stated that reductions in stopping distance of up to 25 percent can be achieved without sacrificing brake balance or tractor-trailer compatibility. It stated that this is because that level of reduced stopping distance can be achieved by only increasing steer axle brake torque. However, it stated that for reductions of over 25 percent, increases in tractor drive axle torque will be necessary, and that this will adversely impact brake compatibility and result in more frequent brake maintenance and reduced vehicle uptime. Arvin Meritor stated that it does not have enough information on the compatibility of tractors with air disc brakes when operated with the existing trailer fleet to provide more specific comments.

NHTSA does have testing information on disc brakes, and after evaluating that data, the agency believes that disc brakes installed on a typical three-axle tractor's drive axles would not have detrimental brake balance issues during braking. Dynamometer testing was performed at VRTC on two brands of 16.5″ x 7″ S-cam drum brakes and two brands of air disc brakes (one 16.93″ rotor diameter x 1.77″ rotor thickness, the other 16.90″ x 1.77″) [50] to quantify such characteristics. In one comparison of an S-cam drum brake to a disc brake, similar torque outputs were produced when each brake was stopped on the dynamometer from an initial speed of 30 mph. However, when stopped from a high speed of 70 mph, the S-cam drum brake lost 42 percent of its maximum effectiveness while the disc brake lost only 24 percent of its maximum effectiveness. Such a disc brake, when installed on a typical tractor drive axle, would not be expected to have detrimental brake balance issues under normal, low-pressure braking because the torque output is similar to the drum brake. In addition, it provides much shorter stopping distance when under hard braking from highway speeds because of reduced brake fade.

There is also the possibility that the drive axle can be equipped with an enhanced S-cam drum brake instead of an air disc brake, as it would be in a hybrid or all-drum brake configuration. While the agency has not completed sufficient testing of enhanced drive/trailer axle S-cam drum brakes (either 16.5″ x 8″ or 16.5″ x 8.625″) under its dynamometer test program at VRTC to determine the reasons for improved torque generation, it is likely that the wider brake drum has increased thermal capacity. This is because the total friction between the lining and the drum would take place spread out over a larger area. Therefore, during a single, 60 mph stop, experience has shown that there would be less fade than for a standard 16.5″ x 7″ axle brake. The agency may conduct future dynamometer testing at VRTC to determine in further detail the characteristics of the enhanced S-cam tractor drive axle drum brake. Currently, however, the agency refers back to the use of the in-service truck tractor used in the Radlinski tests (which used enhanced drum brakes) as evidence of the lack of significant brake balance issues using enhanced S-cam drive axle drum brakes.

c. Brake Balance and Trailer Compatibility Issues for Two-Axle and Severe Service Tractors

NHTSA does not believe that two-axle or severe service tractors will have problems with regard to brake balance and trailer compatibility.

There were no comments regarding tractor-trailer compatibility for two-axle tractors, although Freightliner expressed concern that two-axle tractors may suffer from tractor-trailer compatibility problems of reduced balance when used with existing trailer brakes. The agency is aware of little data on the brake balance and trailer compatibility issues for two-axle tractors with improved brake systems, and most of the comments on two-axle tractors were concerns with stability and control rather than issues of balance between steer and drive or tractor and trailer brakes. NHTSA is aware that some two-axle tractors are already being equipped with larger 16.5″ x 5″ steer axle S-cam brakes, and presumably these brakes are providing satisfactory brake balance trailer compatibility in fleet service. While test data cited above shows that two-axle tractors can attain the reduced stopping distances using disc brakes on the steer and drive axles, that data did not consider compatibility with existing

[50] SAE Technical Report, *Comparison of Heavy Truck Foundation Brake Performance Measured with an Inertia Brake Dynamometer and Analyses of Brake Output Responses to Dynamic Pressure Inputs* (SAE Report No. 2005–01–3611, Hoover and Zagorski, Transportation Research Center, Inc.). Available from SAE, and the report is available for review at NHTSA's Technical Reference Division.

trailers (and converter dollies, as two-axle tractors are often used in double- or triple-trailer combinations).

Given the lack of data or other evidence of a problem, we think that Freightliner's arguments in this context involve speculative concerns; consequently, the agency currently has no reason to believe that two-axle tractors with improved brake systems will have compatibility issues. Nonetheless, considering the complexity of brake system interactions and the current lack of available data (as well as for many other reasons, discussed at length below), the agency has decided to provide longer lead time for the requirements of this final rule for two-axle and severe service tractors so as to provide four years of lead time. This will provide truck manufacturers time to develop designs that do not have problems in this area.

The agency similarly received few comments regarding trailer compatibility for severe service tractors. However, both TMA and Freightliner stated that some heavier severe service tractors are limited to low speeds when fully loaded, and if such a tractor were required to comply with shorter stopping distances from 60 mph, the brakes would be over-designed (*i.e.,* be too powerful for their typical usages). At highway speeds with light loads, this could result in excessive wheel lockup.

The agency has already partially addressed this issue by providing a longer, 310-foot stopping distance requirement for high-GVWR severe service tractors. We understand that many of the severe service tractors that require escort vehicles and low speeds when loaded to GVWR fall into this category, or have a GAWR over 29,000 pounds, and thus are excluded from FMVSS No. 121 entirely. In addition, because the overall brake balance problem for the widely-varying loading condition already exists for these vehicles, we believe that installation of improved brake systems on severe service tractors would have only an incremental (and minimal) effect on brake balance and trailer compatibility.

iii. Cargo Securement

A comment from OOIDA stated concern that the proposed requirement of shorter stopping distances would increase the g-forces acting upon a truck's load to the point where such forces exceed the conditions specified in standards for cargo securement under Federal Motor Carrier Safety Administration (FMCSA) regulations. Under the relevant provisions of FMCSA's cargo securement requirements, 49 CFR 393.102(a)(1) provides that tiedown assemblies (including chains, wire rope, steel strapping, synthetic webbing, and cordage) and other attachment or fastening devices must be designed, installed, and maintained to ensure that the maximum forces acting on the devices do not exceed the manufacturer's breaking strength under a 0.8g deceleration in the forward direction. These requirements were adopted in a September 27, 2002 final rule (67 FR 61212) and became effective on January 1, 2004. The purpose of this FMCSA requirement is to reduce crashes caused by incidents of shifting and falling cargo.

In response to OOIDA's comment, the agency reviewed deceleration rates from tractor tests with improved brake systems to determine whether the cargo securement limits had been reached. Agency testing indicated that under FMVSS No. 121 testing in the loaded-to-GVWR condition with an unbraked control trailer, deceleration rates of approximately 0.65g were typical. However, as noted by Freightliner in its comments, such a tractor is capable of higher deceleration rates when operating with a normal load on a braked trailer. Freightliner stated that tests of such a combination vehicle showed that it was able to stop in 187 feet from a speed of 60 mph, but did not provide deceleration data for this test.

After reviewing the previously-discussed data from VRTC, NHTSA believes that trailers will not exceed FCMSA's cargo securement requirement. The agency analyzed stopping data for a two-axle tractor equipped with disc brakes at all wheel positions, towing a 53-foot van trailer which was also equipped with disc brakes. The tractor and trailer had normal ABS control of all wheels, and had the shortest measured stopping distance of all tractor-trailer combination tests at VRTC. In the test, the tractor steer axle was loaded to 11,000 pounds; its drive axle was loaded to 22,700 pounds, and the tandem trailer axles were loaded to 34,000 pounds (loaded-to-highway weight). This combination stopped from 60 mph in a distance of 186 feet. NHTSA reviewed the deceleration rate during the stop and notes that deceleration was fairly constant at approximately 0.8g once steady-state deceleration was achieved (approximately 0.6 seconds after the full treadle application).[51] We do note that there were momentary spikes of higher and lower deceleration (typical for data traces of this type), with the highest peak at 0.89g for a very short duration. However, the accelerometer was mounted on the tractor frame, and it is NHTSA's belief that the acceleration peaks were anomalies likely due to vibration, as it would not possible for a massive object such as a loaded tractor or trailer to have acceleration rate changes indicated by the peaks. Therefore, the agency has concluded that the highest deceleration rate by a tractor with improved brakes was slightly below 0.8g, thus remaining under the deceleration specified by FMCSA's cargo securement requirement.

The agency also reviewed deceleration data for the VRTC test tractor in the unloaded condition, and we arrived at similar conclusions. The unloaded stopping distance for this tractor-trailer combination was 191 feet (a longer stopping distance than 187 feet, and thus producing even less g-forces on deceleration), which indicates that both in the loaded and unloaded condition the limits of tire adhesion have been reached. The slightly longer stopping distance in the unloaded condition is likely due to additional cycling of the ABS on both the tractor and trailer compared to the loaded-to-highway weight testing.

iv. Testing Procedures

1. Brake Burnish Issues for Tractors With Improved Brake Systems

As discussed in this section, brake burnishing is the process of wearing in the friction components of foundation brakes (brake linings and brake drums or disc rotors), which is necessary to allow the friction surfaces to reach a close-to-normal operating condition prior to conducting stopping distance and grade-holding tests. Currently, in FMVSS No. 121, the burnish procedure is specified in S6.1.8. This procedure involves subjecting a tractor to a series of 500 brake ''snubs'' (*i.e.,* applications of the brake) from an initial speed of 40 mph to a final speed of 20 mph. Virtually all heavy vehicles (trucks, tractors, and buses) use this burnish procedure. Prior to September 1, 1993, vehicle manufacturers were able to use an alternate burnish procedure, which conducted the snubs from higher initial speeds.[52] The primary difference between these two procedures is the temperature at which the brake operates during the burnish. The current procedure is frequently referred to as a ''cold burnish,'' because the brake temperatures typically reach only 300–400 degrees Fahrenheit (F), whereas the

[51] Docket # NHTSA–2005–21462–39, p. 28.

[52] *See* 53 FR 8190.

old procedure is known as a ''hot burnish,'' as the temperatures typically reached 500 degrees F or more. The reason the agency changed from the hot to cold burnish procedure is that when heavy vehicles are operated on the road under normal conditions, the brakes may never reach the same temperatures that are reached under the hot burnish procedure. Therefore, the real world brake performance may have been lower than that tested under FMVSS No. 121 before September 1993.

In the March 14, 1988 final rule establishing the brake burnish procedures, NHTSA stated that given ''consistent research findings about the temperatures to which drum brakes are subjected during normal driving, the agency concludes that a burnish that subjects drum brakes to significantly higher temperatures cannot be said to be representative of normal driving conditions. By allowing the drum brakes to be heated to temperatures well in excess of those encountered during normal driving, the burnish procedures would ideally condition the drum brakes. However, the agency is more interested in the braking capability of vehicles when the brakes are in the condition they are most likely to be when used on the roads than in the maximum braking capability of a braking system if the brakes are ideally conditioned.'' *See* 53 FR 8194.

Several commenters recommended that changes to the burnish procedure be made in relation to the agency's overall efforts to achieve a reduction in stopping distances for truck tractors. Specifically, comments on this issue were raised by HDBMC, which recommended changes to the current burnish procedure that would allow the brake linings to be burnished at higher temperatures than the current burnish procedure produces (essentially a return to the pre-1993 requirements). While the agency has considered the comments relating to burnish procedure, it has decided not to make any changes to that procedure in this rulemaking, for the reasons that follow.

HDBMC recommended in its comments that NHTSA reinstate an optional temperature in FMVSS No. 121, as permitted prior to September 1, 1993, to use the hot burnish procedure. HDBMC stated that in order to achieve the proposed reduction in stopping distance, many tractors will be equipped with higher torque steer axle brakes. In addition, the commenter stated that there tractors will also likely be equipped with wider rear axle brakes (arguing that because NHTSA is mandating a 30-percent reduction in stopping distance, most vehicles will be using wider drive axle drum brakes or disc brakes). As a result, the commenter reasoned that steer axle brakes will do more of the work during burnish, thus lowering the temperature on the drive axle brakes. If wider drive axle drum brakes are used, HDBMC continued, this will result in further lowering of the drive axle brake temperatures. These lower temperatures could result in insufficient brake burnishing on the drive axle brakes. If this were the case, higher friction brake linings on the drive axle brakes may be required, likely resulting in higher maintenance costs and less end-user satisfaction.[53] Further, HDBMC indicated that the decreased lining contact on the drive axles may negatively impact parking brake drawbar pull performance. HDBMC provided an example where a tractor with standard (15″ × 4″) steer axle drum brakes was able to achieve 8,800 pounds of parking brake force, while with enhanced (16.5″ × 5″) steer axle drum brakes it produced only 8,000 pounds of force.

According to HDBMC, therefore, if NHTSA required the improved stopping distances without altering the burnish procedure to provide better burnishing, vehicle manufacturers would have to provide highly unsatisfactory brake linings in order to meet the standard, which would be unfit then for on-road use. Therefore, HDBMC suggests that the burnish procedure be altered.

As discussed in the rulemaking cited above concerning burnish, the agency believes it is appropriate to test the braking capability of vehicles when the brakes are in the condition they are most likely to be when used on the roads. For this reason, we do not believe it would be appropriate to modify the burnish procedure so that it is less reflective of the conditioning experienced by brakes in the real world. However, we have analyzed whether the proposed reduced stopping distance requirements, coupled with the ''cold burnish'' procedure, would result in the problems suggested by HDBMC. For reasons discussed below, we believe these problems will not occur.

NHTSA has reviewed the agency's data from the Radlinski testing in order to consider this issue. This test used the current cold burnish procedure in preparation for testing a typical three-axle tractor with enhanced S-cam drum brakes at all wheel positions, and that vehicle achieved a 30-percent reduction in stopping distance with a good margin of compliance. Based on the review of all of the test data for this vehicle, as well as the simple fact that the vehicle was able to achieve the required stopping distances using the cold burnish procedure, the agency concluded that the current procedure adequately conditioned the foundation brakes in preparation for conducting the remainder of the FMVSS No. 121 test sequence.

A review of the three-axle tractor tests conducted by Radlinski provides insight into the brake lining condition and temperatures of improved braking systems during and after the cold burnish procedure. Comparing two tests using the same brake lining (Spicer EES 420 linings on the steer and drive axles, with ArvinMeritor cast iron drums) at two drive axle GAWRs (34,000 and 40,000 pounds) showed that the lining contact patterns on the drive axle brakes (the percentage of the lining surface that is in full contact with the brake drum) after burnish appeared to be slightly better at the higher 40,000-pound GAWR. Steer axle burnish contact patterns for the two test conditions were approximately the same. Drive axle lining temperatures for the two test conditions throughout the burnish showed slightly higher temperatures for the 40,000-pound GAWR test (average approximately 400 degrees F) than for the 36,000-pound GAWR test (average approximately 380 degrees F), with the highest temperatures occurring at the end of the burnish sequence. Steer axle burnish temperatures were approximately the same for both test conditions and averaged around 280 degrees F.

Parking brake force was also adequate using the current burnish procedure. The average parking brake force (forward and rearward drawbar pulls, four tests with one-quarter wheel revolution per test, with parking brakes on the forward drive axle only) slightly favored the lower drive axle GAWRs. Although lining contact patterns were about the same for the front drive axle (which is not the one equipped with the parking brakes), overall, the tests at the higher GAWR had slightly more lining contact among both drive axles, which is consistent with the slightly higher burnish temperatures. Parking brake performance measured by the drawbar method[54] showed that with the tests conducted at 36,000 pounds GAWR, the margin of compliance was

[53] According to comments by TMA, aggressive high friction brake linings designed to meet strict performance criteria can produce unsatisfactory results when used in real-world applications. For example, in one scenario, TMA suggested that overly aggressive brake linings could glaze over under normal use conditions. This could lead to brake chatter and the subsequent failure of numerous components. TMA Comment from April 14, 2006, available at NHTSA–2005–21462–34).

[54] FMVSS No. 121, S5.6.

approximately 35 percent. The margin of compliance for the tests with the drive axles rated at 40,000 pounds GAWR was approximately 20 percent.

During the loaded-to-GVWR service brake stops from 60 mph, the tests with the drive axles at 36,000 pounds GAWR and Type 20 brake chambers on the steer axle showed that steer axle brake temperatures were typically 30 to 40 degrees F lower than the drive axle lining temperatures (that averaged around 180 degrees F) during the first half of the stop. However, the steer axle temperatures during the second half of the stop increased to approximately the same temperatures as the drive axle brakes. When tested with Type 24 brake chambers on the steer axle, temperature trends during the stop were similar, except that the steer axle brakes were approximately 20 degrees F hotter than for the tests with Type 20 steer axle brake chambers. In both cases, the steer axle brake temperatures increased more than the drive axle temperatures over the duration of the stops.

The agency has concluded from reviewing the brake temperatures during the burnish, and the brake temperatures and stopping distance data during the loaded-to-GVWR tests, that under the various combinations of drive axle GAWRs, brake chamber sizes, and slack adjusters that were reviewed, the vehicle appeared to perform optimally in all regards. The parking brake drawbar test margins of compliance were also good, with the tests at the lower GAWR having slightly better compliance margins. In sum, the test results revealed that the current burnish procedure provided adequate burnishing for tractors with improved braking systems to meet both service brake stopping distance requirements as well as parking brake requirements.

The agency also recognizes that the results from tests conducted by Radlinski may not be as applicable to two-axle or severe service tractors. However, agency stopping distance testing on these tractors indicated that installation of disc brakes generally would be required in order to meet the improved stopping distance requirements. Agency tests with disc brakes showed that there were no apparent brake burnish problems, and disc brakes are generally less sensitive to the burnish procedure because of the geometry of the linings and rotors. Disc brakes' linings and rotors are manufactured with flat friction surfaces that mate well when assembled on the vehicle. Thus, there is little wear-in necessary to achieve full lining to rotor contact, and the brakes readily achieve full torque-generating capability under the existing FMVSS No. 121 burnish procedure.

VRTC testing of two-axle and severe service tractors demonstrated that these vehicles are able to achieve the required stopping distances using the cold burnish procedure. VRTC tests on a two-axle tractor with a 148-inch wheelbase, using all disc brakes, yielded a 200-foot stopping distance and good parking brake performance. Tests on the same tractor with a hybrid braking system yielded a 223-foot stopping distance.[55] Preliminary tests of the three-axle severe service surrogate tractor (*i.e.,* a single-unit truck) with a hybrid brake configuration (disc brakes on the steer axle and standard 16.5″ x 7″ drum brakes on the drive axles) showed mixed results. After the burnish procedure, the drive axle brakes showed less contact area after burnishing than when the truck was tested with drum brakes on the steer axle, supporting HDBMC's argument. However, the test results for the hybrid configuration showed higher parking brake drawbar forces on the drive axles when compared to tests of the all-drum brake vehicle that had more drive axle lining contact area after burnish.[56] Based on the test results, it is evident that the current FMVSS No. 121 brake burnish procedure provides adequate burnishing to conduct the required tests for stopping distance and parking brake pull.

In summary, based upon available data, NHTSA has decided to maintain its prior rulemaking decision amending FMVSS No. 121 to require the use of the cold burnish procedure. The agency is not aware of an actual problem with the burnish procedure for typical three-axle tractors. The agency's testing revealed that all types of tractors were able to meet the required stopping distances using the existing cold burnish procedure. Furthermore, there is no evidence that the current burnish procedure is not indicative of real-world braking conditions. Therefore, we see no need to make any changes to the burnish requirements of FMVSS No. 121.

2. Brake Dynamometer Test Requirements

In the NPRM, the agency requested recommendations on potential modifications to the brake dynamometer requirements of FMVSS No. 121. These requirements test brake retardation force, power, and recovery under strict conditions. The agency received a variety of responses to this request. The majority of commenters stated that they recommend no changes to the dynamometer requirements. However, NHTSA received one comment (ArvinMeritor), suggesting the addition of an optional dynamometer procedure. For the reasons discussed below, the agency has considered the comments, and has decided that no action is necessary or appropriate at this time.

Currently, the requirements of paragraph S5.4.2, *Brake power,* apply to all foundation brakes for all air-braked vehicles covered under FMVSS No. 121. Under the standard, after burnishing, the fade portion of the test specifies ten consecutive snubs from 50 to 15 mph at a deceleration rate of 9 ft/sec^2, followed by a hot stop from 20 mph at a deceleration rate of 14 ft/sec^2. After the hot stop, 20 brake recovery stops from 30 mph at a deceleration rate of 12 ft/sec ^{2} at one minute intervals are made.[57] Brake pressure limits are placed on the fade and recovery requirements, while the hot stop does not have an upper air pressure limitation.

ArvinMeritor requested that NHTSA modify the dynamometer test procedure to allow the option of conducting a series of six 60 mph 100 psi stops at the conclusion of the 350 degree F dynamometer burnish.[58] ArvinMeritor stated that it believes the torque data obtained from these stops would be closer to the brake torques obtained during the vehicle stopping distance test and, therefore, would provide a more accurate stopping distance calculation. Currently, it states, because the temperatures in the dynamometer tests significantly exceed those generated during the stopping distance tests, the dynamometer performance data do not always correlate directly with the actual vehicle test results. According to ArvinMeritor, the optional stops, conducted before the brakes are burnished at the high temperatures,[59]

[55] VRTC testing of the two-axle tractor with all drum brakes revealed problems with replacement brake linings, but the agency has yet to determine how much of the problem is due to burnish procedure versus lining properties. This test yielded two different stopping distances (241 feet versus 332 feet) with original and replacement brake linings. When the replacement linings were machined to better match the curvature of the drums, they achieved similar stopping distances, leading NHTSA to believe that the cause is related to the lining properties, and not the burnish procedure. Regardless, neither lining was able to achieve a 30 percent reduction in stopping distance with a 10 percent margin of compliance.

[56] Currently, additional brake research is underway on this vehicle to determine stopping distance and brake burnish effect interactions with enhanced drum brakes.

[57] These requirements do not apply to the steer axle of tractors.

[58] *See* S6.2.6.

[59] Subsequent to this procedure, the brakes are burnished at a temperature between 450° and 550°.

would provide data that better correlate with data from the actual tests, where the brakes have undergone similar lower-temperature burnishing.

While there is some cause to believe that allowing an additional six stops from 60 mph would provide useful information for modeling purposes, as ArvinMeritor asserts, NHTSA does not have enough information to adopt this recommendation. ArvinMeritor did not describe what the test conditions would be for these optional stops (such as the initial brake temperature or intervals between stops), but we assume they would be conducted with an initial brake temperature between 150 and 200 degrees F, with a cool-down to that initial temperature between stops. If so, the optional stops would probably not have much influence on the remainder of the dynamometer test requirements, since those stops occur in much higher temperature ranges. However, such stops could have an influence on the brake retardation force requirements in S5.4.1, if the 60 mph optional stops resulted in additional higher temperature burnishing beyond the required burnish procedure. The agency would need more information on the potential benefits and ramifications of this procedure prior to amending the standard to specify a manufacturer option in this area.

Two commenters (HDBMC and Haldex) recommended that there be no changes made to the current dynamometer requirements. Both stated that the current requirements do not limit the amount of steer axle brake torque. (Haldex also mentioned that there is no limit in drive axle brake torque.) As the increases in stopping distance will largely be achieved through increasing steer axle brake torque, both commenters stated that this aspect of the requirements should not be changed. A third commenter (Bendix) stated that it is conducting dynamometer testing and would be willing to provide this information to NHTSA on a confidential basis upon completion of its testing program, although this information has not been received.

TMA commented that the agency could not make any changes to the dynamometer requirements without first issuing a separate NPRM, as no specific changes to these requirements were proposed in the NPRM for this rule. TMA stated that if the agency did go through with a separate rulemaking to modify the dynamometer requirements, it would likely need to have a different effective date than the one mandated in this final rule. In that case, according to TMA, the effect would be to undo all the work TMA member companies will need to do to respond to the current final rule, since designs will have been tailored to meet the currently-proposed requirements. TMA stated that any component change can greatly influence performance of the braking system, and as a result, TMA members require a 10-year stability period between rulemakings that affect brake system design in order to amortize development and investment costs. While this comment does not substantively address the issue of possible changes to the dynamometer requirements, the agency has taken TMA's concerns into consideration.

Based on the comments received and our assessment of this issue, the agency has decided not to modify the dynamometer test requirements. TMA's concerns notwithstanding, the agency believes that, if necessary, it would be better to consider revisions to the dynamometer requirements in a future rulemaking effort separate from the current tractor stopping distance rulemaking.

v. Stopping Distances at Reduced Initial Test Speeds

HDBMC and Bendix commented that in the NPRM, the 20 percent and 30 percent stopping distance reduction values in Table II of FMVSS No. 121 for test speeds below 60 mph did not take into account the brake system reaction time and average deceleration. Thus, under the agency's proposed stopping distance requirements for a 30 percent reduction in stopping distance from an initial speed of 20 mph, the commenters stated that an average deceleration as high as 0.95 g would be necessary (with an allowance for a 10 percent margin of compliance in stopping distance). According to the commenters, this deceleration rate is not achievable with existing truck braking and tire technology.

The agency has reviewed the tables of stopping distances provided by HDBMC and Bendix in their respective comments. In the case of HDBMC, it did not indicate what equations or methods it used to derive their recommended tables. For example, the agency could not determine what was occurring during the brake system reaction time (for 0.36, 0.45, and 0.54 second reaction times). Bendix provided similar recommendations but again it did not describe how its recommended tables of stopping distance were derived. The agency believes that because both commenters recommended stopping distances at reduced test speeds that are much longer than what the agency had proposed, the commenters' recommendations are not accounting for the buildup in deceleration that the agency's data indicate does occur during the initial brake pressure increase during typical stopping distance tests using a full treadle valve brake application. Nevertheless, after consideration of this issue the agency is providing the following analysis and revised stopping distance stables for tests conducted at reduced test speeds.[60]

For this analysis, we are using the stopping distance equation that was derived by researchers at the VRTC. The equation is as follows:

$S_t = (\frac{1}{2}\ V_o\ t_r) + ((\frac{1}{2})\ V_o^2;/a_f)$—$((1/24)\ a_f\ t_r^2;)$

Where:
S_t = Total stopping distance in feet
V_o = Initial Speed in ft/sec
t_r = Air pressure rise time in seconds
a_f = Steady state deceleration in ft/sec^2

The complete derivation of this equation is included in the docket.[61] For the final rule, we selected an air pressure rise time of 0.45 seconds that is equal to the brake actuation timing requirement in S5.3.3. This requirement specifies that for a truck (including a truck-tractor), the air pressure in the brake chambers must reach at least 60 psi within 0.45 seconds.

The agency reviewed three test plots of deceleration versus time for tractor tests it conducted at VRTC to determine if the plot characteristics matched the stopping distance equation and the pressure rise time selected for this final rule. The three plots are included in the docket.[62] The first plot is for the Sterling 4x2 tractor equipped with disc brakes at all wheel positions and coupled to a braked 53-foot van trailer with tandem axles also equipped with disc brakes. The vehicle was loaded to typical highway weight (*i.e.,* steer axle 11,000 pounds; drive axle 22,700 pounds, tandem trailer axles 34,000 pounds) that is slightly below the GVWR for each vehicle. This combination represents the best-performing unit that was tested at VRTC, and it had a 60 mph stopping distance of 186 feet. As the plot shows, the steady-state deceleration was slightly less than 0.8g for the duration of the stop. The 0.8g deceleration was reached within approximately 0.5 seconds from the point of brake application. This deceleration and stopping distance are believed to be the best obtainable for a tractor-trailer

[60] We note that the neither the notice of proposed rulemaking, nor the previous rulemaking on this issue (53 FR 8190), contained detailed information on how the stopping distances for reduced initial test speeds were derived.

[61] *See* Docket No. 2005–21462–39, p. 18.

[62] *See* Docket No. 2005–21462–39, p. 28.

combination vehicle using all production equipment (tires, antilock braking system, air disc brakes, *etc.*) available at the present time.

The next two plots included from VRTC tests are for tractors that achieved a stopping distance of approximately 250 feet. These were used to determine the steady-state deceleration required to achieve this stopping distance. The second plot [63] is for a Volvo 6x4 tractor equipped with disc brakes on the steer axle and S-cam drum brakes on the drive axles, and it was coupled to an unbraked control trailer. The tractor was loaded to GVWR and was also braking the extra 4,500 pounds on the control trailer axle. The stopping distance for this vehicle from 60 mph was 249 feet and the steady state deceleration was approximately 0.45g. The plot shows that this tractor achieved the 0.45g deceleration rate at approximately 0.4 seconds.

The third plot is for a Peterbilt 6x4 tractor equipped with enhanced S-cam drum brakes on the steer axle and standard S-cam drum brakes on the drive axles, loaded to GVWR with an unbraked control trailer. The 60-mph stopping distance was 250 feet, and the deceleration varied slightly from approximately 0.48g at the midpoint of the stop to approximately 0.56g near the end of the stop. The deceleration during the stop was not exactly stead state since the deceleration rate increased towards the end of the stop. The rate at 0.45 seconds was approximately 0.36g.

The plots for the second and third tests, the Volvo and Peterbilt tractors respectively, demonstrate that for a 250-foot stopping distance requirement, deceleration rates in the range of 0.45g to 0.56g would be achieved by actual vehicles. It appears that the Volvo had a slightly faster application timing, and thus had a lower steady-state deceleration rate than the Peterbilt while attaining approximately the same stopping distance.

Using the VRTC equation for stopping distance, we derived the following three tables of stopping distance for three requirements in this final rule: (1) Standard service tractors loaded to GVWR plus 4,500 pounds on the unbraked control trailer axle; (2) severe service tractors loaded to GVWR plus 4,500 pounds on the unbraked control trailer axle; and (3) all tractors tested in the lightly-loaded vehicle condition. Note that the table for severe service tractors contains the same values currently in FMVSS No. 121 for single-unit trucks loaded to GVWR, but we are reproducing this table here to show the estimated deceleration levels with a 0.45-second pressure rise time.

TABLE I—STOPPING DISTANCE CALCULATIONS FOR TWO- AND THREE-AXLE TRACTORS WITH A GVWR OF 70,000 POUNDS OR LESS, AND TRACTORS WITH FOUR OR MORE AXLES AND A GVWR OF 85,000 POUNDS OF LESS, IN THE LOADED-TO-GVWR CONDITION. (BRAKE SYSTEM REACTION TIME IS 0.45 SECONDS)

Initial vehicle speed		Steady-state deceleration		Stopping distance
(mph)	(ft/sec)	(ft/sec^2)	(g's)	(ft)
20	29.3	18.00	0.56	30
25	36.7	18.00	0.56	45
30	44.0	17.50	0.54	65
35	51.3	17.00	0.53	89
40	58.7	17.00	0.53	114
45	66.0	16.80	0.52	144
50	73.3	16.80	0.52	176
55	80.7	16.80	0.52	212
60	88.0	16.80	0.52	250

TABLE II—STOPPING DISTANCE CALCULATIONS FOR THREE-AXLE TRACTORS WITH A GVWR GREATER THAN 70,000 POUNDS, AND TRACTORS WITH FOUR OR MORE AXLES AND A GVWR GREATER THAN 85,000 POUNDS, IN THE LOADED-TO-GVWR CONDITION. (BRAKE SYSTEM REACTION TIME OF 0.45 SECONDS)

Initial vehicle speed		Steady-state deceleration		Stopping distance
(mph)	(ft/sec)	(ft/sec^2)	(g's)	(ft)
20	29.3	15.00	0.47	35
25	36.7	14.65	0.45	54
30	44.0	14.15	0.44	78
35	51.3	13.90	0.43	106
40	58.7	13.75	0.43	138
45	66.0	13.60	0.42	175
50	73.3	13.45	0.42	216
55	80.7	13.40	0.42	261
60	88.0	13.35	0.41	310

[63] Docket No. 2005–21462–39, p. 29.

TABLE III—STOPPING DISTANCE CALCULATION FOR ALL TRACTORS IN THE UNLOADED CONDITION. (BRAKE SYSTEM REACTION TIME OF 0.45 SECONDS.)

Initial vehicle speed		Steady-state deceleration		Stopping distance
(mph)	(ft/sec)	(ft/sec^2)	(g's)	(ft)
20	29.3	19.80	0.61	28
25	36.7	19.40	0.60	43
30	44.0	18.80	0.58	61
35	51.3	18.10	0.56	84
40	58.7	18.10	0.56	108
45	66.0	17.95	0.56	136
50	73.3	17.95	0.56	166
55	80.7	17.95	0.56	199
60	88.0	17.95	0.56	235

We compared the calculated values for the 60 mph, 250-foot stopping distance requirements in Table I for a typical tractor to those test vehicles described above, in order to determine if the actual and calculated decelerations are similar. The calculated steady-state deceleration from the table with an initial test speed of 60 mph is 0.56g of deceleration, and this compares to 0.45g for the Volvo (that had a quicker response time, and thus slightly lower steady-state deceleration than the Peterbilt), and 0.48 to 0.52g for the Peterbilt (which had a slower response time, and thus a slightly higher steady-state deceleration than the Volvo). These values are similar to the 0.52g calculated in Table I, and therefore the agency believes the equation used to calculate the stopping distances is valid. We did not perform similar analyses for stopping distances conducted at other initial test speeds, because we did not conduct any testing at reduced test speeds. Only tests from an initial speed of 60 mph were conducted at VRTC.

We do not understand the basis for the concerns raised by HDBMC and Bendix in their comments about the proposed stopping distances requiring abnormally high deceleration levels. As shown in the tables of calculated stopping distances, the maximum required deceleration for an unloaded tractor at an initial speed of 20 mph is 0.61g. Even with a ten percent added margin of compliance, the actual performance would not appear to need to be greater than 0.67g. As described above, for the tests on the Sterling tractor operated with a braked van trailer, deceleration of almost 0.8g was attained at highway weight. Our tests of unloaded tractors indicated that nearly similar stopping distance performance was attained in the bobtail mode, an in each case a margin of compliance substantially greater than 10 percent was achieved when the vehicle was tested from an initial speed of 60 mph. It appears to us that HDBMC and Bendix could be using a method such as a free-roll during pressure rise that would assume no braking during the initial pressure rise. However, these commenters did not provide enough detail in the comments for the agency to thoroughly evaluate their claims. In any event, for the reasons discussed above, we believe that the new stopping distance calculations for the lower initial test speeds properly take into account brake actuation periods, and do not require excessive rates of deceleration.

vi. Comments Regarding Foreign Trade Agreements

A comment from the government of the People's Republic of China requested that Chinese manufacturers be given a longer transitional period for implementation of improved stopping distance requirements, citing the Agreement on Technical Barriers to Trade.[64] China cited clause 12.3 of the Agreement, which reads:

> Members shall, in the preparation and application of technical regulations, standards, and conformity assessment procedures, take account of the special development, financial and trade needs of developing country Members, with a view to ensuring that such technical regulations, standards and conformity assessment procedures do not create unnecessary obstacles to exports from developing country Members.

In its comment, China quoted the agency in stating in the NPRM that ''improvements in truck tractor stopping distance performance may involve more than simply increasing the power of foundation brakes, as changes might be required to suspensions and frames, *etc.,* to handle the higher braking torque without decreasing vehicle durability and safety.'' Further, China noted that the requirements of the Chinese National Standards on truck stopping distance (GB7258–2004 and GB12676–1999) are significantly less stringent than the stopping distances proposed by NHTSA. Finally, China cited the fact that disc brakes—along with larger capacity drum brakes, electrically controlled braking systems, and anti-lock braking systems—were only starting to be used on a limited number of vehicles in China. All of these factors, China stated, should be taken into consideration in a decision whether to give Chinese manufacturers a longer transitional period for implementation of the improved stopping distance requirements.

We have carefully considered China's comments. In responding, we begin by noting that, in the U.S., the applicable FMVSSs are the same regardless of where a motor vehicle or item of motor vehicle equipment is manufactured. Therefore, any extension of lead time would not be limited to Chinese manufacturers but would be available to all manufacturers irrespective of where they manufacture truck tractors for the U.S. market. While we carefully consider the issue of necessary lead time in establishing and amending FMVSSs, we also recognize that extending lead time can also result in the delay of safety benefits.

We note that while China highlighted substantial differences between the Chinese and proposed U.S.

[64] A summary of the treaty on the Web site of the World Trade Organization reads, ''[t]his agreement will extend and clarify the Agreement on Technical Barriers to Trade reached in the Tokyo Round. It seeks to ensure that technical negotiations and standards, as well as testing and certification procedures, do not create unnecessary obstacles to trade. However, it recognizes that countries have the right to establish protection, at levels they consider appropriate, for example for human, animal or plant life or health or the environment, and should not be prevented from taking measures necessary to ensure those levels of protection are met. The agreement therefore encourages countries to use international standards where these are appropriate, but it does not require them to change their levels of protection as a result of standardization.'' Available at *http://www.wto.org/english/docs_e/legal_e/ursum_e.htm#dAgreement.*

requirements regarding stopping distance requirements for heavy truck tractors, it did not provide specific information explaining why particular Chinese manufacturers would need additional time to comply with the new stopping distance requirements. There are many other substantial differences in vehicle safety regulation between the two countries, and we believe that a manufacturer building vehicles otherwise compliant to the U.S. FMVSSs would likely be capable of making the relatively minor modifications in brake design required by the upgraded performance requirements in this final rule, consistent with the lead time provided in this final rule.

With specific regard to extended lead time, we note that as discussed above, the agency is providing longer lead time, relative to that proposed in the NPRM, of four years for two-axle and severe service tractors. This relates to the additional design and testing work that must be done on these tractors to ensure that they can meet the improved stopping distances while maintaining good stability and control of the vehicles at issue. Therefore, Chinese manufacturers, like other manufacturers, will have longer time to undertake the design and testing necessary to meet the improved standards for these classes of truck tractors.

However, we believe that two years is adequate lead time for manufacturers to design standard three-axle tractors that can meet the improved stopping distance requirements. We note that standard three-axle tractors that already comply with the 30 percent reduction in required stopping distance are being manufactured and used on public roads in this country already. NHTSA has determined that these tractors can be improved to meet the enhanced requirements with relatively little design work, as compared to other classes of heavy truck tractors. We also believe that extending the lead time for these vehicles would inappropriately delay the safety benefits of this final rule.

vii. Miscellaneous Comments

Several commenters expressed concerns regarding the current state of heavy truck tractor maintenance. Brake Pro, Haldex, and HDBMC all commented that current vehicle maintenance procedures in many cases do not maintain braking systems at the same level as original equipment. Brake Pro added that aftermarket and foreign-produced brake lining material may be less efficient than materials included as original equipment. While these may be valid concerns, they are outside the scope of this rulemaking. This rulemaking addresses only new vehicles and the equipment sold on new vehicles; it does not apply to maintenance procedures once the vehicles are sold to end users.

In-service performance requirements for brake systems on commercial vehicles are covered under the Federal Motor Carrier Safety Administration's (FMCSA's) Federal Motor Carrier Safety Regulations (FMCSRs), as cited in the Code of Federal Regulations at Title 49, Part 393, Section 52, *Brake Performance.* That regulation sets service and emergency brake stopping distance requirements for various categories of passenger- and property-carrying commercial motor vehicles from an initial speed of 20 mph. It also includes minimum vehicle deceleration requirements for service brake systems. While it may be appropriate to set new standards for tractors that will be required to comply with shorter stopping distance requirements, it is not clear how that would be done at the present time, given the influences of trailer braking and operating weight versions the FMVSS No. 121 testing that is performed at full GVWR using an unbraked control trailer. Presumably, additional research or study would need to be conducted to derive proposed revisions to the FMCSRs. However, that work has not yet been performed.

A comment from an individual (Mr. John Kegley) requested that the new rule mandate that all Class 8 trucks have engine or exhaust brakes. Similarly, a comment from Mr. Timothy Larrimore suggested that the regulation should mandate that all trucks have four axles. Based on the data presented above, it is our belief that modifying the stopping distance requirements is the best way to achieve safety benefits, while still permitting manufacturers to use their own discretion in how they meet those requirements. We are not adopting these commenters' suggestions.

Finally, a comment from Mr. Roger Sauder suggested that instead of mandating new stopping distance requirements, the agency should focus on informing the public about proper driving techniques in the presence of large vehicles. We are not adopting this suggestion. We note that currently, such public education projects are already in place. Further, the data presented above indicate that reducing the stopping distance of heavy trucks will result in a substantial reduction in injuries and property damage prevented.

viii. Costs and Benefits of Shorter Tractor Stopping Distances

1. Estimated Benefits of a 30 Percent Reduction in Stopping Distance

In the Final Regulatory Impact Analysis (FRIA), the agency estimates that substantially greater safety benefits will be attained with a 30 percent reduction in required stopping distance compared to the benefits for a 20 percent reduction. For the 30 percent reduction scenario, the agency estimates that 227 fatalities and 300 serious injuries (AIS 3–5) will be prevented by improving the stopping distance requirement. For the 20 percent reduction scenario, the agency estimates that only 91 fatalities and 127 serious injuries would be prevented.[65] The differential in estimated reduced property damage is even greater, with approximately five times the property damage prevented for the 30 percent case versus the 20 percent case ($205 million compared to $39 million).[66] In estimating the numbers of property damage-only (PDO) vehicle involvements, crashes, and injuries, figures were derived from the agency's 2004–2006 GES database and the number of fatalities was determined from the agency's 2004–2006 FARS database. A more detailed comparison between the two alternatives, using a 7% discount rate, is laid out in the table below:[67]

[65] *See* FRIA, at VI–6.

[66] *See* FRIA, at VI–7. We note that these figures in 2007 dollars discounted at 3%.

[67] *See* FRIA, at VI–13.

ANNUAL COSTS AND BENEFITS IN MILLIONS OF 2007 DOLLARS DISCOUNTED AT 7% FOR 30% REDUCTION IN STOPPING DISTANCE

Costs (in millions)			Benefits (in millions)			Net benefit			Net cost			Cost per ELS		
Low	High	Most likely	Property damage	ELS	Monetized	Low	High	Most likely	Low	High	Most likely	Low	High	Most likely
$27	$192	$54	$169	212	$1,293	$1,271	$2,872	$1,410	−$141.4	$22.9	*−$115.1	N/A	$0.1	N/A

* The PDO benefits were greater than the costs, which resulted in a negative number.

ANNUAL COSTS AND BENEFITS IN MILLIONS OF 2007 DOLLARS DISCOUNTED AT 7% FOR 20% REDUCTION IN STOPPING DISTANCE

Costs (in millions)			Benefits (in millions)			Net benefit			Net cost			Cost per ELS		
Low	High	Most likely	Property damage	ELS	Monetized	Low	High	Most likely	Low	High	Most likely	Low	High	Most likely
$19	$134	$48	$32	87	$531	$426	$1,082	$512	−$12.9	$101.6	$15.4	N/A	$1.1	$0.2

The FRIA estimates there are 864 fatalities, 15,614 non-fatal injuries and 17,621 PDO crashes occurring annually in which the front of a braked truck tractor strikes another vehicle. It is estimated that reducing the stopping distance of truck tractors will reduce the following subsets of those crashes: (1) Rear-end, truck striking passenger vehicle (4 percent of total passenger car occupant fatalities); (2) passenger vehicle turned across path of truck (8 percent); and (3) straight path, truck into passenger vehicle (generally side-impact crashes at roadway junctions; 14 percent). The total percentage of all passenger vehicle occupant fatalities for these crash types was 26 percent. In addition, it is possible that some of the head-on collisions could be reduced in severity, since improvements in the braking capability of large trucks could reduce impact speeds.[68]

The reduction in required stopping distance also produces substantial benefits in property damage reduction. Using a three percent discount rate, the agency believes that $205 million of property damage will be prevented annually (present value of property damage savings over the lifetime of these vehicles) with the 30 percent required reduction in stopping distance. Using a seven percent discount rate, the resulting figure is $169 million in property damage prevented.

Some commenters (Advocates, IIHS) stated that the agency should mandate not only the 30 percent reduction in required stopping distance, but also mandate the use of disc brakes in truck tractors. These commenters also stated that disc brakes have certain characteristics (namely resistance to fading at high temperatures) which would provide additional benefits that enhanced S-cam drum brakes would not, even if they provided equivalent torque in the FMVSS No. 121 testing requirements. Accordingly, the commenters argued that these benefits should be factored into the cost-benefit analysis.

NHTSA, however, does not have data on the benefits of disc brakes beyond the benefits of similar-performing drum brakes. We note that FMVSS No. 121 is a performance-based standard, and any type of foundation brake that can meet the stopping distance and other requirements of the standard are permitted. Thus, it is not design-restrictive with respect to the type of foundation brake used to meet the requirements.

In a comment, Freightliner and TMA suggested that two-axle tractors present less of a need to reduce stopping distances than standard three-axle tractors do. Freightliner and TMA stated that two-axle tractors represent 10 percent of air-braked tractors produced annually, but are only involved in 3.4 percent of fatal crashes involving tractors. Because of this low fatality rate, the commenters claim, these vehicles should not be included in the agency's rulemaking to require shorter stopping distances. International also commented that it believes two-axle tractors should be excluded from the rulemaking. Although International did not cite the fatality involvement rates in its comments, it stated that it was an active participant in the preparation of TMA's comments.

TMA included in its comments a report on Class 8 truck tractor crash statistics performed by the University of Michigan Transportation Research Institute (UMTRI) using its Trucks Involved in Fatal Accidents database for the years 1999 through 2003.[69] This submission presented an alternative data set, which purportedly showed that the proportion of fatalities from these types of accidents is only 21.2 percent. The agency notes, however, that the UMTRI study was restricted to Class 8 (heavy truck tractors with a GVWR greater than 33,000 pounds) vehicle crashes, which would account for the slight disparity between the figures cited by TMA and NHTSA.

Table 7 of the UMTRI report shows the type of road (interstate, U.S. route, State route, county road, *etc.*) on which the Class 8 tractor fatal involvements occurred, as well as the tractor type. The data indicate that two and three-axle tractors have similar crash rates, and that they occur on different types of roads in similar frequencies. According to this submission, two-axle tractor crash data regarding road type for Class 8 tractors were quite similar to those for typical three-axle tractors. Only slightly fewer fatal crashes occurred among two-axle tractors on interstates (29 percent) compared to three-axle tractor fatal crashed occurring on interstates (34 percents). Crashes among the two vehicle configurations were nearly the same for U.S. and State routes, and slightly higher for two-axle tractor crashes on county roads (seven percent) versus typical three-axle tractors (five percent).

The agency does not agree with TMA that two-axle tractors are under-represented in fatal crashes to a degree that would warrant their being excluded from this final rule. Table 3 of the UMTRI report indicated that there were 724 Class 3 through 7 tractors in the sample (most if not all of these would be two-axle Class 7 tractors with a GVWR between 26,001 and 33,000 pounds, and would be in the lower combination weight applications such as beverage delivery), compared to the 534 crashes of Class 8 two-axle tractors

[68] *See* FRIA, at II–4.

[69] *See* Docket No. NHTSA–2005–21462–26, TMA submission of April 14, 2006.

(GVWR greater than 33,000 pounds) in the sample that was used in its analysis. Thus, more than half of the two-axle tractors involved in fatal crashes are missing from UMTRI's analysis because they were not Class 8 tractors (the report states that only Class 8 tractors were used in the analysis). Therefore, we believe that the data indicate that two-axle tractors are represented in fatal crashes to a similar extent as three-axle tractors.

2. Cost of Improved Brake Systems

Because the agency does not know the specific methods that truck manufacturers would use to upgrade tractor brake systems to meet the new requirements, in developing the NPRM the agency used an array of foundation brake upgrades to estimate the increased costs for the brake system improvements. The highest cost of complying with shorter stopping distance requirements would be realized if all tractors were equipped with disc brakes rather than the current S-cam drum brakes, and the lowest cost would be realized if all tractors could meet the new requirements if they were equipped with enhanced (larger) S-cam drum brakes. Both methods have been demonstrated to provide sufficient improvements in braking performance for typical three-axle tractors, while agency testing and data completed after the publication of the NPRM show that the disc brake approach would be required to meet the 30 percent reduction in required stopping distance for certain less common configurations of tractors (*i.e.,* severe service and two-axle tractors).

In quantifying the costs to comply with the reduced stopping distance requirements, in the FRIA, the agency used as a basis the costs of installing improved brake systems on new truck tractors. NHTSA also determined that currently, approximately ten percent of tractors have enhanced S-cam drum brakes installed on the steer axle, and three percent of tractors have enhanced S-cam drum brakes installed on the drive axles. Therefore, in determining the costs of upgrading to improved brake systems, we calculated the costs of upgrading 90 percent of all steer axles and 97 percent of all drive axles. Commenters also indicated that approximately 82 percent of all tractors are typical three-axle tractors (similar to the tractors from the Radlinski and VRTC tests). TMA and Freightliner stated that typical three-axle tractors comprise 82 percent of annual tractor production and ATA stated that such tractors comprise 81 percent of production. Freightliner commented that two-axle tractors comprise ten percent of tractor production, and severe service tractors comprise seven percent (although there may be a rounding error as Freightliner's statements on total production for the three types of tractors add to 99 percent).

With regard to standard three-axle tractors, based on the VRTC test report and the three test reports [70] from Federal Mogul and Motion Control Industries, the 30 percent reduction in required stopping distance could be met by using larger S-cam drum brakes or disc brakes at all wheel positions on tractors. The agency believes that the cost to install larger drum brakes would be much lower than the cost to install air disc brakes, although we do not have specific cost information on the various modifications to truck tractor braking systems. In the PRIA, the agency estimated that the cost for larger S-cam drum brakes is $75 for the steer axle [71] and $50 for each drive axle [72] to meet the 30 percent reduction requirement. For typical three-axle tractors, which make up about 82 percent of annual production, we estimated $175 ($\$75_{steer} + 2 \times \$50_{drive} = \$175$) for larger drum brakes. In its comments regarding the PRIA, Freightliner stated that larger drum brakes at all wheel positions would be $222. However, that manufacturer did not break costs associated with steer and drive axles. Due to limited data, for purposes of our cost estimates in the FRIA, we assumed that the cost for larger S-cam drum brakes is $85 for the steer axle and $65 for each drive axle ($215 for typical three-axle tractors).[73] Although the estimated $215 is lower than Freightliner's $222 cost (about three percent lower), we would expect that when larger quantities of brakes are produced the cost will be lower than the current $222.[74] The agency estimates that if manufacturers were to install enhanced drum brakes at all wheel positions, the total cost of this rulemaking would be $27 million ($211 [75] per vehicle).[76]

Costs for disc brakes are estimated to be higher than those for enhanced S-cam drum brakes.[77] The agency does not have specific cost information on disc brakes, but assumes, based on the current average pricing of disc brakes, that the cost would be $500 per axle (either steer or drive axles). If all affected vehicles are equipped with disc brakes to meet the requirement, the agency estimates that the associated incremental cost would be about $192M (or $1,475 per truck tractor, considering that approximately 82 percent of truck tractors have three axles) to fit disc brakes at each wheel position of the 130,000 truck tractors manufactured each year.[78] Freightliner also provided comments on the cost of disc brakes, indicating that the incremental costs of upgrading to disc brakes on all axles would be $1,627 for three-axle tractors and $963 for two-axle tractors. These figures are not significantly different from those used in the FRIA, and again we would expect that if larger quantities of brakes are produced the cost would be lower than the current $500 per axle, as suggested by the IIHS in its comments.

In its analysis, the agency also considered the cost of installing hybrid brake systems on all truck tractors. If all applicable vehicles are equipped with front disc and rear larger S-cam drum brakes, the associated cost of the rulemaking would be about $80M (or $613 per vehicle).[79]

Finally, in the FRIA, the agency provides a best estimate of the incremental cost. This scenario assumes that for typical three-axle tractors, manufacturers would comply with the reduced stopping distance requirements through use of the least costly means available, *i.e.,* the use of enhanced drum brakes at all wheel positions. For two-axle and severe service tractors, which make up approximately 18 percent of all tractors, manufacturers would need to use disc brakes at all wheel positions. The total cost of these improvements, which consist of upgrading standard three-axle tractors to enhanced S-cam drum brake configurations and upgrading two-axle and severe service tractors to all-disc brake configurations, would be an average cost of $413 per vehicle, or about $55.4 million total

[70] Test Report Nos. RAI–FM–20, RAI–MC–04, AND RAI–FM–21.

[71] The size increases from 15″ x 4″ to 16.5″ x 5″ or 16.5″ x 6″.

[72] The size increases from 16.5″ x 7″ to 16.5″ x 8⅝″ or 16.5″ x 8″.

[73] We note that this figure is in 2005 dollars.

[74] FRIA, V–1.

[75] Figures for the estimated incremental cost per vehicle take into consideration the fact that 10 percent of tractors currently in production are equipped with larger drum brakes at the steer axle, and 3 percent are equipped with larger drum brakes at the drive axle. *See* FRIA [V–2]. Further, we note that this figure is in 2007 dollars.

[76] FRIA, E–4.

[77] FRIA, V–3.

[78] Some of the typical three-axle tractors may need disc brakes on the steer axle only, and many of these tractors may be able to comply by upgrading to enhanced drum brakes (the lowest-cost option). Thus it is unlikely that the total cost to implement the requirements would be close to the high-end cost estimate in the FRIA (which was to install disc brakes on all tractors).

[79] FRIA, V–4.

annual costs. However, we also note that a small number of commercial truck tractors (approximately three percent, all of which are standard three-axle tractors) already comply with the 30 percent reduction in required stopping distance. Subtracting the cost of those vehicles from the total implementation cost of the rule yields a total incremental cost of $53.7 million.[80]

3. Additional Costs Incurred Resulting From Improved Brake Systems

The NPRM also asked for information on tractor components other than the foundation brakes (*e.g.,* frames and suspension) that may need to be modified to meet shorter stopping distance requirements of 20–30 percent. Specifically, the agency was seeking to identify additional costs or weight penalties that might be required to meet the new stopping distance requirements. While numerous commenters discussed potential additional costs that could result from the use of improved brake systems in truck tractors, relatively little specific information was supplied on vehicle modifications that may be required to equip tractors with more powerful foundation brakes. TMA cited chassis structural analysis, design, and validation, but did not elaborate on the costs or scope of these issues. TMA also stated that more powerful brakes may require tuning with regard to brake noise, vibration, and modifications to the ABS. Freightliner stated that if two-axle tractors are fitted with disc brakes, electronic stability control systems may be needed to reduce instability during hard braking events. Haldex stated that routine vehicle modifications (*e.g.,* tires, suspensions, chassis structure) would be most effectively addressed by the vehicle manufacturers.

On the issue of weight penalties for improved brake systems, Bendix provided data on drum brake weights versus disc brake weights. It stated that the heaviest drum brakes weigh more than the lightest disc brakes, while the heaviest disc brakes weigh more than the lightest drum brakes. It stated that for a three-axle tractor equipped with all disc brakes, total vehicle weight could increase by 212 pounds, or could decrease by 134 pounds, compared to an all drum braked tractor, depending on which disc or drum brakes are used for comparison. ArvinMeritor stated in its comments that the new brakes will weigh more, although it did not provide a specific value. WABCO, on the other hand, stated that the weight of a disc brake is equivalent to the weight of high performance drum brakes.

After evaluating all comments and available data, we estimate that the improved brakes may add a small amount of weight to the vehicle, resulting in slight additional fuel consumption and possible loss of revenue by displacing cargo-carrying capability, but that those costs cannot be determined from the available data. Overall, however, we believe those costs to be very small.

4. Summary of Costs and Benefits Estimates

The FRIA calculates cost and benefits ratios for larger drum brake, disc brake, and hybrid disc/drum brake tractor configurations. As part of this analysis, the agency estimated Net Cost per Equivalent Life Saved (NCELS) for such scenarios. A wide range of estimates are provided because of the uncertainty in knowing in advance exactly which brake system improvements will be employed to meet the new requirements. The agency's estimates of costs and benefits are summarized in tables presented below. We note, for reasons discussed earlier, that while manufacturers can meet the upgraded requirements with larger drum brakes for a significant majority of tractors, it is likely that disc brakes will be needed for two-axle and severe axle tractors (comprising approximately 18 percent of tractors).

ESTIMATED ANNUAL SAFETY BENEFITS

Percent reduction in stopping distance	Fatalities reduced	Serious injuries reduced
30%	227	300

PROPERTY DAMAGE PREVENTED

[In millions]

Percent reduction in stopping distance	3% Discount	7% Discount
30%	$205	$169

INCREMENTAL COSTS

[2007 Dollars]

30% Percent reduction in stopping distance	Larger S-cam drum at all wheel positions	Disc brakes at all wheel positions	Front disc and larger rear S-cam drum	Most likely combination
Total Cost	$27M	$192M	$80M	$54M
Cost Per Vehicle	211	1,475	613	413

NET COST PER EQUIVALENT LIFE SAVED

[For 30% reduction in stopping distance, in millions]

Brake system	3 Percent	7 Percent
Larger S-Cam Brake	NB	NB
All Disc Brake	NB	$0.108

[80] *See* FRIA, at V–5.

NET COST PER EQUIVALENT LIFE SAVED—Continued

[For 30% reduction in stopping distance, in millions]

Brake system	3 Percent	7 Percent
Front Disc and Larger Rear S-Cam Drum	NB	NB
Most Likely Combination	NB	NB

NB = Net Benefits (Property damage benefits exceed the costs).

ix. Lead Time

NHTSA is specifying differing compliance dates for typical three-axle tractors on the one hand, and two-axle and severe service tractors on the other. The agency has described the available test data for typical three-axle tractors with improved brake systems, showing that compliance with the new stopping distance requirements can be readily achieved. Therefore, the agency is requiring a compliance date that is about two years from the date of publication of this final rule for typical three-axle tractors (*i.e.,* three-axle truck tractors with a GVWR less than or equal to 59,600 pounds).[81]

The lead time for all two-axle tractors, and severe service tractors with a GVWR greater than 59,600 pounds, is approximately four years from the date of publication of this final rule. As previously described, available test data indicate that two-axle tractors can meet a 250-foot loaded-to-GVWR stopping distance requirement with improved brake systems. However, additional lead time is needed to more fully evaluate new brake systems to ensure compatibility with existing trailers and converter dollies when used in multi-trailer combinations, and to minimize the risk of vehicle stability and control issues, particularly on shorter wheelbase two-axle tractors. For severe service tractors, the agency described the available test data and analyses indicating that vehicle improvements are available that would make the new 250-foot and 310-foot loaded-to-GVWR stopping distance requirements attainable. However, only limited development work relevant to reduced stopping distance has been performed on these vehicles to date. As several commenters indicated, additional lead time is needed for complete testing and validation of new brake systems for these vehicles to ensure that full compliance can be achieved, without compromising control, stability, and comfort elements important to end users.

IV. Rulemaking Analyses and Notices

a. Vehicle Safety Act

Under 49 U.S.C. Chapter 301, *Motor Vehicle Safety* (49 U.S.C. 30101 *et seq.*), the Secretary of Transportation is responsible for prescribing motor vehicle safety standards that are practicable, meet the need for motor vehicle safety, and are stated in objective terms.[82] These motor vehicle safety standards set the minimum level of performance for a motor vehicle or motor vehicle equipment to be considered safe.[83] When prescribing such standards, the Secretary must consider all relevant, available motor vehicle safety information.[84] The Secretary also must consider whether a proposed standard is reasonable, practicable, and appropriate for the type of motor vehicle or motor vehicle equipment for which it is prescribed and the extent to which the standard will further the statutory purpose of reducing traffic accidents and associated deaths.[85] The responsibility for promulgation of Federal motor vehicle safety standards has been delegated to NHTSA.[86]

Based upon the agency's research, the agency determined that a substantial number of fatalities and injuries result annually from collisions between combination trucks (*i.e.,* tractor trailers) and light vehicles. The agency further determined that a 30 percent reduction in heavy truck tractor stopping distance is both technologically and financially achievable and could prevent a substantial number of these identified fatalities and injuries. In developing this final rule amending the relevant requirements of FMVSS No. 121 to reduce heavy truck stopping distance, the agency carefully considered the statutory requirements of 49 U.S.C. Chapter 301.

First, this final rule reflects the agency's careful consideration and analysis of all issues raised in public comments on the agency's December 2005 notice of proposed rulemaking. In responding to the issues raised in the comments, the agency considered all relevant motor vehicle safety information. In preparing this document, the agency carefully evaluated relevant, available research, testing results, and other information related to various air brake technologies. In sum, this document reflects our consideration of all relevant, available motor vehicle safety information.

Second, to ensure that the heavy truck stopping distance requirements remain practicable, the agency evaluated the potential impacts of the proposed requirements in light of the cost, availability, and suitability of various air brake systems, consistent with our safety objectives and the requirements of the Safety Act. As explained in detail in the FRIA, this final rule adopts a 30 percent reduction in stopping distance for the overwhelming majority of tractors, which corresponds to the most stringent of the requirements proposed in the NPRM. (For the remaining one percent (mostly severe service tractors with high GVWRs), the final rule adopts a requirement for a 13 percent reduction in stopping distance beyond the standard's existing levels.) Our analysis of the available data and public comments shows that it is practicable for the subject vehicles to achieve the newly required reduction in stopping distance using available technology. In sum, we believe that this final rule is practicable and will increase the benefits of FMVSS No. 121, including prevention of deaths and injuries associated with many types of crashes involving heavy truck tractors.

Third, the regulatory text following this preamble is stated in objective terms in order to specify precisely what performance is required and how performance will be tested to ensure compliance with the standard. Specifically, this final rule modifies the performance requirements specified in Table 2 of Standard No. 121, without substantively altering the standard's test procedures. The standard's test procedures continue to delineate carefully how testing will be conducted,

[81] As stated above, ''typical three-axle tractors'' have a steer axle GAWR less than or equal to 14,600 pounds and a combined drive axle GAWR less than or equal to 45,000 pounds. Summing these GAWRs yields a GVWR that is equal to or less than 59,600 pounds.

[82] 49 U.S.C. 30111(a).

[83] 49 U.S.C. 30102(a)(9).

[84] 49 U.S.C. 30111(b).

[85] *Id.*

[86] 49 U.S.C. 105 and 322; delegation of authority at 49 CFR 1.50.

including applicable brake burnish and dynamometer procedures. The agency continues to believe that this test procedure is sufficiently objective and will not result in any uncertainty as to whether a given vehicle satisfies the requirements of the FMVSS No. 121.

Fourth, we believe that this final rule will meet the need for motor vehicle safety by making certain modifications that will reduce heavy truck stopping distances, thereby permitting the driver to potentially avert crash-related fatalities and injuries.

Finally, we believe that this final rule is reasonable and appropriate for motor vehicles subject to the applicable requirements. As discussed elsewhere in this notice, the modifications to the standard resulting from this final rule will further the agency's efforts to prevent the injuries, fatalities, and property damage associated with crashes involving heavy truck tractors and other vehicles. NHTSA has determined that enhanced foundation brakes used to meet the requirements of this final rule offer an effective means to prevent (or mitigate the severity of) many of these crashes. Accordingly, we believe that this final rule is appropriate for covered vehicles that are or will become subject to these provisions of FMVSS No. 121 because it furthers the agency's objective of preventing deaths and serious injuries.

b. Executive Order 12866 and DOT Regulatory Policies and Procedures

Executive Order 12866, ''Regulatory Planning and Review'' (58 FR 51735, October 4, 1993), provides for making determinations whether a regulatory action is ''significant'' and therefore subject to OMB review and to the requirements of the Executive Order. The Order defines a ''significant regulatory action'' as one that is likely to result in a rule that may:

(1) Have an annual effect on the economy of $100 million or more or adversely affect in a material way the economy, a sector of the economy, productivity, competition, jobs, the environment, public health or safety, or State, local, or Tribal governments or communities;

(2) Create a serious inconsistency or otherwise interfere with an action taken or planned by another agency;

(3) Materially alter the budgetary impact of entitlements, grants, user fees, or loan programs or the rights and obligations of recipients thereof; or

(4) Raise novel legal or policy issues arising out of legal mandates, the President's priorities, or the principles set forth in the Executive Order.

We have considered the impact of this action under Executive Order 12866 and the Department of Transportation's regulatory policies and procedures. Given that the estimated costs of this final rule could exceed $100 million, this action has been determined to be economically significant under the Executive Order and accordingly has been reviewed by the Office of Management and Budget. Further, this rulemaking action has been determined to be ''significant'' under the Department of Transportation's Regulatory Policies and Procedures (44 FR 11034; February 26, 1979).

As discussed above, there are a number of simple and effective manufacturing solutions that vehicle manufacturers can use to meet the requirements of this final rule. These solutions include installation of enhanced drum brakes, air disc brakes, or hybrid disc/drum systems. The costs will vary depending on which solution is selected. We believe the most likely low cost scenario would be for a significant majority of tractors to use enhanced drum brakes, with about 18 percent needing to use more expensive disc brakes. Under this scenario, annual costs would be about $50 million. If disc brakes were used for all tractors, annual costs would be $178 million.

Once all subject heavy truck tractors on the road are equipped with enhanced braking systems, we estimate that annually, approximately 258 lives will be saved and 284 serious injuries will be prevented. In addition, this final rule is expected to prevent over $140 million in property damage annually, an amount which alone is expected to exceed the total cost of the rule.

The agency has prepared and placed in the docket a Final Regulatory Impact Analysis.

c. Regulatory Flexibility Act

Pursuant to the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.,* as amended by the Small Business Regulatory Enforcement Fairness Act (SBREFA) of 1996), whenever an agency publishes a notice of rulemaking for any proposed or final rule, it must either prepare and make available for public comment a regulatory flexibility analysis that describes the effect of the rule on small entities (*i.e.,* small businesses, small organizations, and small governmental jurisdictions) [87] or certify that the rule will not have a significant economic impact on a substantial number of small entities. In order to make such a certification, the agency must conduct a threshold analysis. The results of that analysis must be included in a statement that accompanies the certification and provides the factual basis for making it.

NHTSA has considered the effects of this final rule under the Regulatory Flexibility Act. I certify that this final rule will not have a significant economic impact on a substantial number of small entities. The basis for this certification is that the vast majority of truck tractors manufactured in the United States are produced by five vehicle manufacturers, none of which is a small business. The remaining volume of heavy truck tractors (about 1 percent) is produced by final-stage manufacturers, which may be small businesses. However, it is our understanding that these final-stage manufacturers rarely make modifications to the tractor's braking system; instead, they rely upon the pass-through certification provided by chassis manufacturers. Accordingly, we do not believe that this final rule will have a significant economic impact on truck tractor manufacturers that are classified as small businesses.

Regarding the impacts on brake manufacturers, we are aware of six original equipment air brake manufacturers. However, none of them is classified as a small business. In any event, due to the fact that the rule will generally necessitate installation of more advanced (and higher priced) drum and disc brakes, we anticipate that the final rule will result in a positive economic impact upon brake manufacturers regardless of business size.

d. Executive Order 13132 (Federalism)

NHTSA has examined today's final rule pursuant to Executive Order 13132 (64 FR 43255, August 10, 1999) and concluded that no additional consultation with States, local governments, or their representatives is mandated beyond the rulemaking process. The agency has concluded that the rule does not have federalism implications, because the rule does not have ''substantial direct effects on the States, on the relationship between the national government and the States, or on the distribution of power and the responsibilities among the various levels of government.''

Further, no consultation is needed to discuss the preemptive effect of today's rule. NHTSA's safety standards can have preemptive effect in at least two ways. First, the National Traffic and Motor Vehicle Safety Act contains an

[87] The Small Business Administration's regulations at 13 CFR Part 121 define a small business, in part, as a business entity ''which operates primarily within the United States.'' (13 CFR 121.105(a)).

express preemption provision: ''When a motor vehicle safety standard is in effect under this chapter, a State or a political subdivision of a State may prescribe or continue in effect a standard applicable to the same aspect of performance of a motor vehicle or motor vehicle equipment only if the standard is identical to the standard prescribed under this chapter.'' 49 U.S.C. 30103(b)(1). It is this statutory command that unavoidably preempts State legislative and administrative law, not today's rulemaking, so consultation would be unnecessary.

Second, the Supreme Court has recognized that State requirements imposed on motor vehicle manufacturers, including sanctions imposed by State tort law, can stand as an obstacle to the accomplishment and execution of a NHTSA safety standard. When such a conflict is discerned, the Supremacy Clause of the Constitution makes the State requirements unenforceable. *See Geier* v. *American Honda Motor Co.,* 529 U.S. 861 (2000). NHTSA does not currently foresee any potential State requirements that might conflict with today's final rule. Without any conflict, there could not be any implied preemption.

e. Executive Order 12988 (Civil Justice Reform)

With respect to the review of the promulgation of a new regulation, section 3(b) of Executive Order 12988, ''Civil Justice Reform'' (61 FR 4729, February 7, 1996) requires that Executive agencies make every reasonable effort to ensure that the regulation: (1) Clearly specifies the preemptive effect; (2) clearly specifies the effect on existing Federal law or regulation; (3) provides a clear legal standard for affected conduct, while promoting simplification and burden reduction; (4) clearly specifies the retroactive effect, if any; (5) adequately defines key terms; and (6) addresses other important issues affecting clarity and general draftsmanship under any guidelines issued by the Attorney General. This document is consistent with that requirement.

Pursuant to this Order, NHTSA notes as follows. The preemptive effect of this rule is discussed above. NHTSA notes further that there is no requirement that individuals submit a petition for reconsideration or pursue other administrative proceeding before they may file suit in court.

f. Executive Order 13045 (Protection of Children From Environmental Health and Safety Risks)

Executive Order 13045, ''Protection of Children from Environmental Health and Safety Risks'' (62 FR 19855, April 23, 1997), applies to any rule that: (1) Is determined to be ''economically significant'' as defined under Executive Order 12866, and (2) concerns an environmental, health, or safety risk that the agency has reason to believe may have a disproportionate effect on children. If the regulatory action meets both criteria, the agency must evaluate the environmental health or safety effects of the planned rule on children, and explain why the planned regulation is preferable to other potentially effective and reasonably feasible alternatives considered by the agency.

Although this final rule is an economically significant regulatory action under Executive Order 12866, the problems associated with crashes involving heavy trucks and other vehicles equally impact all persons riding in a vehicle, regardless of age. Consequently, this final rule does not involve decisions based upon health and safety risks that disproportionately affect children, as would necessitate further analysis under Executive Order 13045.

g. Paperwork Reduction Act

Under the Paperwork Reduction Act of 1995 (PRA), a person is not required to respond to a collection of information by a Federal agency unless the collection displays a valid OMB control number. There are not any information collection requirements associated with this final rule.

h. National Technology Transfer and Advancement Act

Section 12(d) of the National Technology Transfer and Advancement Act of 1995 (NTTAA), Public Law 104–113, (15 U.S.C. 272) directs the agency to evaluate and use voluntary consensus standards in its regulatory activities unless doing so would be inconsistent with applicable law or is otherwise impractical. Voluntary consensus standards are technical standards (*e.g.,* materials specifications, test methods, sampling procedures, and business practices) that are developed or adopted by voluntary consensus standards bodies, such as the Society of Automotive Engineers. The NTTAA directs us to provide Congress (through OMB) with explanations when we decide not to use available and applicable voluntary consensus standards. The NTTAA does not apply to symbols.

There are no voluntary consensus standards related to heavy truck stopping distance available at this time. However, NHTSA will consider any such standards as they become available.

i. Unfunded Mandates Reform Act

Section 202 of the Unfunded Mandates Reform Act of 1995 (UMRA) requires Federal agencies to prepare a written assessment of the costs, benefits, and other effects of proposed or final rules that include a Federal mandate likely to result in the expenditure by State, local, or Tribal governments, in the aggregate, or by the private sector, of more than $100 million annually (adjusted for inflation with base year of 1995 (so currently about $118 million in 2004 dollars)). Before promulgating a NHTSA rule for which a written statement is needed, section 205 of the UMRA generally requires the agency to identify and consider a reasonable number of regulatory alternatives and adopt the least costly, most cost-effective, or least burdensome alternative that achieves the objectives of the rule. The provisions of section 205 do not apply when they are inconsistent with applicable law. Moreover, section 205 allows the agency to adopt an alternative other than the least costly, most cost-effective, or least burdensome alternative if the agency publishes with the final rule an explanation of why that alternative was not adopted.

As discussed in that notice, this final rule amending FMVSS No. 121 is not expected to result in the expenditure by State, local, or Tribal governments, in the aggregate, of more than $118 million annually, but it may result in an expenditure of that magnitude by vehicle manufacturers and/or their suppliers. In the final rule, NHTSA has adopted a performance requirement for most heavy truck tractors to reduce stopping distance by 30 percent from the standard's previous levels (with approximately one percent of heavy truck tractors with an extremely high GVWR which will be required to achieve a stopping distance 13 percent below previous levels); we believe that this approach is consistent with safety, and it should provide a number of choices regarding the means used for compliance (*e.g.,* enhanced drum brakes, all-disc brakes, or hybrid drum/disc brakes), thereby offering flexibility to minimize costs of compliance with the standard. As noted previously, the agency has prepared a detailed economic assessment in the FRIA. In

that assessment, the agency analyzed the cost-benefit analysis of both a 20 percent and a 30 percent reduction in required stopping distance. Although the 30 percent requirement does cost more to implement, the benefits estimated in the 30 percent reduction scenario far outweighed those identified in the 20 percent reduction scenario.

j. National Environmental Policy Act

NHTSA has analyzed this rulemaking action for the purposes of the National Environmental Policy Act. The agency has determined that implementation of this action will not have any significant impact on the quality of the human environment.

k. Regulatory Identifier Number (RIN)

The Department of Transportation assigns a regulation identifier number (RIN) to each regulatory action listed in the Unified Agenda of Federal Regulations. The Regulatory Information Service Center publishes the Unified Agenda in April and October of each year. You may use the RIN contained in the heading at the beginning of this document to find this action in the Unified Agenda.

l. Privacy Act

Please note that anyone is able to search the electronic form of all comments received into any of our dockets by the name of the individual submitting the comment (or signing the comment, if submitted on behalf of an association, business, labor union, *etc.*). You may review DOT's complete Privacy Act Statement in the **Federal Register** published on April 11, 2000 (Volume 65, Number 70; Pages 19477–78), or you may visit *http://docketsinfo.dot.gov/.*

List of Subjects in 49 CFR Part 571

Standard No. 121, Air-brake systems.

■ In consideration of the foregoing, NHTSA is amending 49 CFR Part 571 as follows:

PART 571—FEDERAL MOTOR VEHICLE SAFETY STANDARDS

■ 1. The authority citation for Part 571 of Title 49 continues to read as follows:

Authority: 49 U.S.C. 322, 30111, 30115, 30117, and 30166; delegation of authority at 49 CFR 1.50.

■ 2. Section 571.121 is amended by revising S5, adding S6.1.18, revising Table II, and adding Table IIa after Table II to read as follows:

§ 571.121 Standard No. 121; Air brake systems.

* * * * *

S5. *Requirements.* Each vehicle shall meet the following requirements under the conditions specified in S6. However, at the option of the manufacturer, the following vehicles may meet the stopping distance requirements specified in Table IIa instead of Table II: Three-axle tractors with a GVWR of 59,600 pounds or less that are manufactured before August 1, 2011; two-axle tractors that are manufactured before August 1, 2013, and tractors with a GVWR above 59,600 pounds that are manufactured before August 1, 2013.

* * * * *

S6.1.18 *Fuel tank loading.*

The fuel tank(s) is (are) filled to 100 percent of rated capacity at the beginning of testing and is (are) not less than 75 percent of rated capacity during any part of the testing.

* * * * *

TABLE II—STOPPING DISTANCE IN FEET

Vehicle speed in miles per hour	Service brake						Emergency brake	
	PFC 0.9	PFC 0.9	PFC 0.9	PFC 0.9	PFC 0.9	PFC 0.9	PFC 0.9	PFC 0.9
	(1)	(2)	(3)	(4)	(5)	(6)	(7)	(8)
20	32	35	30	35	38	28	83	85
25	49	54	45	54	59	43	123	131
30	70	78	65	78	84	61	170	186
35	96	106	89	106	114	84	225	250
40	125	138	114	138	149	108	288	325
45	158	175	144	175	189	136	358	409
50	195	216	176	216	233	166	435	504
55	236	261	212	261	281	199	520	608
60	280	310	250	310	335	235	613	720

Note:

(1) Loaded and Unloaded Buses.

(2) Loaded Single-Unit Trucks.

(3) Loaded Tractors with Three Axles and a GVWR of 70,000 lbs. or less; or with Four of More Axles and a GVWR of 85,000 lbs. or less. Tested with an Unbraked Control Trailer.

(4) Loaded Tractors with Three Axles and a GVWR greater than 70,000 lbs.; or with Four or More Axles and a GVWR greater than 85,000 lbs. Tested with an Unbraked Control Trailer.

(5) Unloaded Single-Unit Trucks.

(6) Unloaded Tractors (Bobtail).

(7) All Vehicles except Tractors, Loaded and Unloaded.

(8) Unloaded Tractors.

TABLE IIA—STOPPING DISTANCE IN FEET: OPTIONAL REQUIREMENTS FOR: (1) THREE-AXLE TRACTORS WITH A GVWR OF 59,600 POUNDS OR LESS MANUFACTURED BEFORE AUGUST 1, 2011; (2) TWO-AXLE TRACTORS MANUFACTURED BEFORE AUGUST 1, 2013; AND (3) TRACTORS WITH A GVWR OF MORE THAN 59,600 POUNDS MANUFACTURED BEFORE AUGUST 1, 2013

Vehicle speed in miles per hour	Service brake				Emergency brake	
	PFC 0.9	PFC 0.9	PFC 0.9	PFC 0.9	PFC 0.9	PFC 0.9
	(1)	(2)	(3)	(4)	(5)	(6)
20	32	35	38	40	83	85
25	49	54	59	62	123	131
30	70	78	84	89	170	186
35	96	106	114	121	225	250
40	125	138	149	158	288	325
45	158	175	189	200	358	409
50	195	216	233	247	435	504
55	236	261	281	299	520	608
60	280	310	335	355	613	720

Note: (1) Loaded and unloaded buses; (2) Loaded single unit trucks; (3) Unloaded truck tractors and single unit trucks; (4) Loaded truck tractors tested with an unbraked control trailer; (5) All vehicles except truck tractors; (6) Unloaded truck tractors.

* * * * *

Issued: July 20, 2009.

Ronald L. Medford,

Acting Deputy Administrator.

[FR Doc. E9–17533 Filed 7–24–09; 8:45 am]

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H.R. 1777/P.L. 111–39

To make technical corrections to the Higher Education Act of 1965, and for other purposes. (July 1, 2009; 123 Stat. 1934)

S. 614/P.L. 111–40

To award a Congressional Gold Medal to the Women Airforce Service Pilots (''WASP''). (July 1, 2009; 123 Stat. 1958)

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